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**OWNERSHIP AND INCUMBRANCE OF
REGISTERED LAND.**

A TREATISE ON THE LAW
RELATING TO
OWNERSHIP AND INCUMBRANCE
OF REGISTERED LAND,

AND INTERESTS THEREIN;

TOGETHER WITH
THE LAND TRANSFER ACTS, 1875 AND 1897, AND
LAND TRANSFER RULES, 1903,
ARRANGED IN A CONSOLIDATED FORM.

BY
JAMES EDWARD HOGG,

OF LINCOLN'S INN, BARRISTER-AT-LAW :

Author of "The Australian Torrens System," etc.

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PREFACE.

SEEING that at least six books have already been published on the subject of the Land Transfer Acts and registered land (though only one has yet reached a second edition), it is necessary to state first of all why the present book has been added to the list.

So far every author who has written a separate book on the subject has thrown his work, either entirely or for the greater part, into the form of annotations upon the sections of the Acts and the individual rules. This method, even when preliminary and supplemental dissertations are added, seems to leave something to be desired in the way of complete treatment of a subject so novel, both in theory and practice. The present book is, so far as it covers the same ground as preceding publications, intended to state the objects, scope, general methods, and difficulties of the new system in a somewhat fuller and more convenient manner than has yet been done.

The book is also intended to supplement other works by endeavouring to explain the origin of, and reasons for, the principal features of the Land Transfer Acts, 1875 and 1897, and by offering solutions of some of the gravest difficulties in the new system. Since the Land Transfer Acts are based on principles which have not yet been generally applied to land law in England, and are entirely foreign to most of the principles of feudalism, it is impossible to rely solely on the ordinary principles and rules of English real property law in constructing an intelligible and workable system out of the provisions of these Acts. In order to construe the Acts satisfactorily, reference to other systems of property law, and the use of analogies drawn from other systems, appear to be absolutely necessary. Besides using analogies drawn from various branches of English law relating to personal property, I have ventured to point out what appear to be similar provisions or difficulties in other systems of land law not purely English—such as Scottish law, South African (Roman Dutch) law, and the Australian (Torrens)

system. Although Scottish and South African law have Roman law as the basis of their common law, yet each has an excellent system of registration of title—though without State warranty. Moreover, although the basis of South African land law is allodial, yet Scottish land law is more feudal than English land law. The Australian system is based neither on allodial ownership nor on Roman law, but on purely English feudal land law, and is thus particularly valuable as a source of workable analogies for the new English system; it affords an example of registration of title imposed on purely English law.

Approaching the subject historically, through a consideration of the origin and intended effect of the 1875 Act, I have attacked the various difficulties connected with the legal estate, the registered charge, registration with possessory title, etc., by drawing on other branches and phases of purely English property law, real and personal, for explanations and resemblances, and where these sources are not sufficient, recourse has been had to other systems of property law.

The main part of the book consists of a treatise, in seven chapters, dealing with the first registration of land, transactions with interests in the land when registered, and remedies such as rectification of the register and indemnity for loss. The latter part of the book consists of a print of the Acts and Rules arranged in a consolidated form for the sake of more convenient reference and comparison.

J. E. H.

8, NEW SQUARE, LINCOLN'S INN,
March, 1906.

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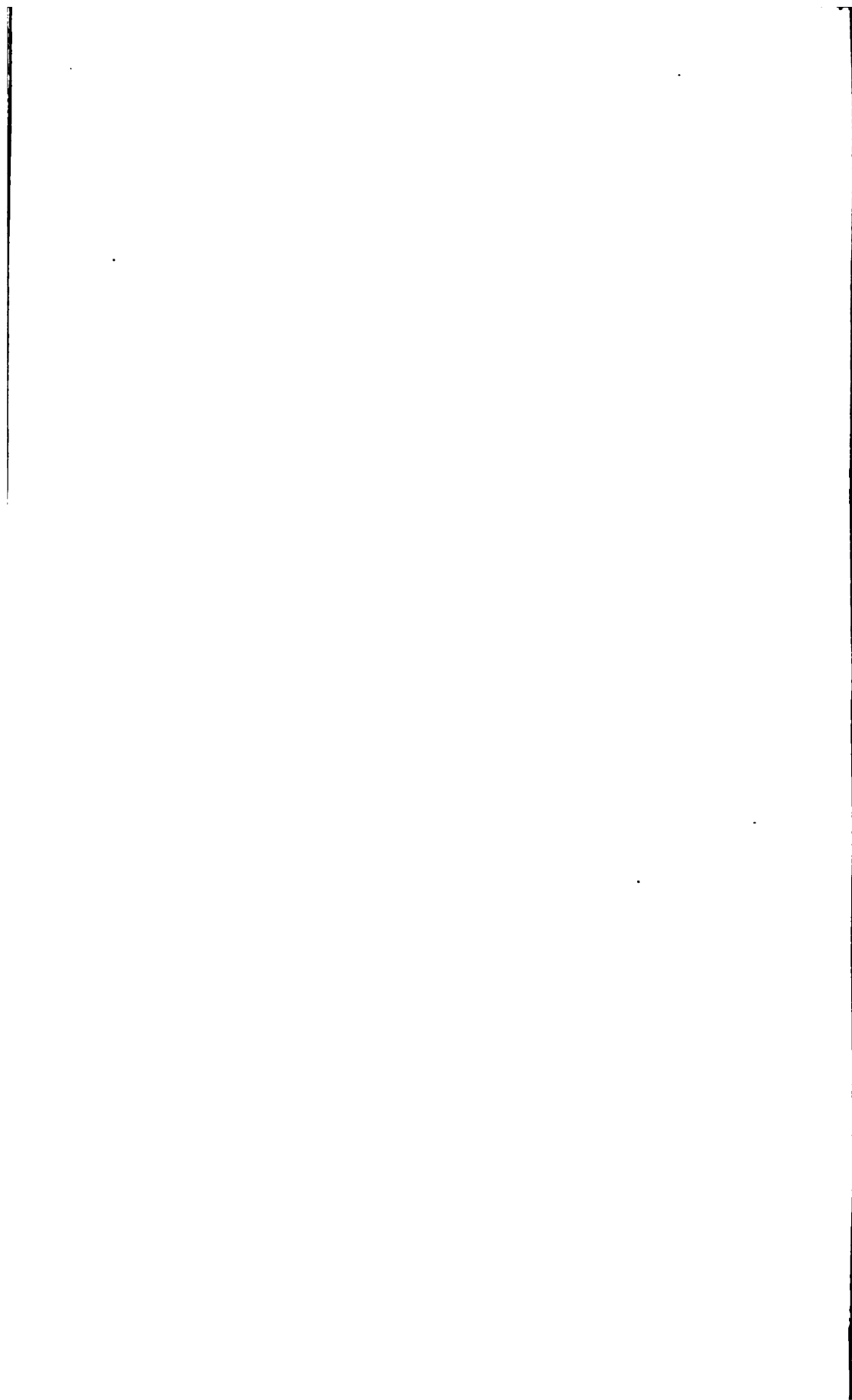


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ADDENDA.

Page 2.—As to construing Acts of Parliament by the light of Reports of Royal Commissions, see also *Taff Vale Ry. v. Amalgamated Society of Railway Servants*, [1901] A. C. at 487, 488.

Pages 47, 74, 89, 91, 190, 148, 174.—*In re Nisbet and Potts' Contract* has been affirmed on appeal: [1906] W. N. 12.

Pages 85, 115, 184, 261, 264, 267, 268, 269.—On the 2nd March, 1906, judgment in *Att.-Gen. v. Odell* had not yet been delivered.

OWNERSHIP AND INCUMBRANCE. OF REGISTERED LAND.

CHAPTER I.

THE INTRODUCTION OF REGISTRATION OF TITLE INTO ENGLISH LAND LAW.

SEC. 1.—The genesis of the Land Transfer Act, 1875.

SEC. 2.—The scheme of the Land Transfer Acts and Rules.

SECTION 1.—THE GENESIS OF THE LAND TRANSFER ACT, 1875.

THE Land Transfer Acts, 1875 and 1897, form, together with the Land Transfer Rules, 1903, a code of law which has been found extremely difficult to interpret. The intention of the legislature—as indicated by the title and preamble of the 1875 Act—was to simplify title to land, and facilitate its transfer. According to the interpretation placed upon the Acts and Rules by a large body of professional opinion,¹ some leading writers,² and even the Court of Appeal,³ the title to land, and its transfer, will not be simplified and facilitated by the land being registered, but, on the contrary, conveyancing transactions will be more troublesome and costly than in the case of unregistered land. Since such an interpretation of the Acts and Rules would be at variance with the intention expressed in the title and preamble of the principal Act, it seems justifiable to resort to a consideration of “extraneous circumstances”⁴ in order to discover the meaning of the legislature; among these extraneous circumstances are the history of, and reasons for, the legislation which has to be interpreted—under the canons of construction laid

¹ See, for instance, the *Solicitors' Journal*, *passim*, during the years 1904 and 1905.

² See, for instance, the precautions considered to be necessary, in dealing with registered land, by the editors of *Prideaux's Precedents* and *Key and Elphinstone's Precedents*; and see an article in the *Law Quarterly Review* for January, 1905, by

Sir Howard Elphinstone.

³ In *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631. See the dicta of Cozens-Hardy, L. J., at p. 655.

⁴ *Hawkins v. Gathercole* (1855), 6 D. M. & G. at 21, quoted in *Eastman Photographic Co. v. Comptroller-General*, [1898] A. C. at 575.

down in *Heydon's Case*.⁵ These canons of construction are constantly referred to when the general scheme and policy of an Act of Parliament have to be considered. This was done in *Bruce v. Ailesbury*,⁶ where the policy of the Settled Land Acts was considered by the House of Lords in the light of the baneful effect, as disclosed in the Royal Commission on Agriculture and known historically, of the law of settlement upon the cultivation and useful occupation of land. And Lord Halsbury, in *Eastman Photographic Co. v. Comptroller-General*, quoting from two cases above cited, said with reference to the Patent Acts of 1883 and 1888: "We are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason of the remedy . . . a commission was appointed to inquire into the duties, organization, and arrangements of the Patents Office. . . . It appeared by the report of the commissioners that complaints had been made as to the working of the Act of 1883. . . . I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission . . . it appears to me that to construe the Statute now in question, it is not only legitimate but highly convenient to refer both to the former Act, and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy." These passages furnish a rule of great value for the interpretation of the Land Transfer Acts and Rules, and particularly of the 1875 Act. The system of conveyancing and land law set up by the Land Transfer Acts differs so widely from the general system of conveyancing law as it obtains in England apart from those Acts, as to be scarcely intelligible without some reference to the history of the movement which has resulted in the introduction of registration of title into English land law. The very brief account now to be given of this movement has the strictly practical object of endeavouring to throw light on the existing Land Transfer Acts, and everything of merely historical interest will be, as far as possible, avoided.

Before stating anything in the way of matters of history, however, it will be convenient to explain what is meant by "registration of title." The phrase is often equivalent to "conveyance by registration of title." A system of registration of title is a system of property law which provides for a register, entry upon

⁵ (1584) 3 Co. Rep. 7b, quoted in *Eastman Photographic Co. v. Comptroller-General*, *supra*, at 573.

⁶ [1892] A. C. at 361-363. And see *In re Mundy and Roper's Cont.*, [1899] 1 Ch. at 288, 289.

which is essential to the passing of certain rights of property from one person to another in such a way that the latter's rights in the subject-matter of the transaction become complete, and good against the world. The salient features in a system of registration of title may be best apprehended by comparing it with a system of "registration of assurances." Under the latter, entry on the register is not essential to the complete passing of rights of property, but such entry is in the nature of an additional safeguard, by the neglect of which rights acquired by the execution of an instrument assuring them may be lost, as against a third person who does place an entry on the register in his own favour. The Middlesex and Yorkshire registers are examples of systems of registration of assurances of land; the Statute of Inrolments of 1535, and the Bedford Level Act of 1663, both create systems of registration of title to land.

The existing system of registration of title, introduced by the Land Transfer Act, 1875, and now embodied in the Acts of 1875 and 1897 and the Rules of 1903, was set up as the final outcome of the Reports of four Royal Commissions, viz.: (1) The Report of 1830, being the Second Report of the Real Property Commissioners; (2) the Report of 1850, made by the Commission on Registration and Conveyancing of 1847; (3) the Report of 1857, by the Commission on Land Transfer and Registration; (4) the Report made in 1869—but usually referred to as the Report of 1870—by another Commission on Land Transfer and Registration. These four Reports form a continuous series, each taking up the subject where the previous Reports had left it, and advancing it a stage; together with the evidence upon which they are based, they constitute a crescendo movement in favour of registration of title as against registration of assurances. In the Report of 1830 registration of title is suggested, but not seriously entertained; in the Report of 1850 it is considered, but not deemed sufficiently practicable in competition with registration of assurances; in the Report of 1857 it is definitely recommended as both practicable and superior to registration of assurances; and in the Report of 1870 it is strongly advocated without reference to any alternative system. Incidentally, the necessary amendments of the existing law, on the subject of equitable estates and constructive notice, are pointed out in the two earlier, and recommended in the two later, Reports. A brief consideration of each Report will make these statements clear.

1. The Real Property Commissioners were, by their Commission, directed "to make a diligent and full inquiry into the law of England respecting real property and the various interests therein, and the methods and forms of alienating, conveying, and transferring the same, and of assuring the titles thereto, and . . . whether any and

what improvements can be made therein, and how the same may be best carried into effect." In their First Report of 1829 the Commissioners say: "The modes by which estates and interests in real property are created, transferred, and secured, are exceedingly defective, and require many important alterations" (p. 7); "at present there is constant danger from secret transfers and secret charges" (p. 8), which are guarded against by elaborate provisions for keeping alive quasi-fictitious legal estates. In their Second Report of 1830 the Commissioners, in presenting their report as "the result of our deliberations on a general registry of deeds and instruments relating to land," remark that the subject "has appeared to us to exceed in magnitude and importance all the other objects within the scope of our Commission," and come to the conclusion that "there should be a general register." The registration recommended is registration of assurances only—i.e. "as between the parties instruments executed for valuable consideration should have full force without being registered"—and, although plans for registration of title—i.e. "making registration essential to a conveyance"—were placed before them, the Commissioners considered that any such plans would be premature (pp. 35, 36). The essential features of the plan recommended were that "every document relating to real property, by which any estate or charge is created or transferred at law or in equity, should be registered"—excluding copyholds and some leasehold interests (p. 28)—that priority should be gained by priority of registration, and that "actual notice of an unregistered deed should not affect the priority of a registered deed for valuable consideration, either at law or in equity" (p. 36); provision was also made for a "caveat" to be entered in order to protect contracts, etc. (p. 29); and the important suggestion was made that it might "be expedient to make the office or Government responsible to the parties interested for the due discharge of the duties of the officers" (p. 56). The Report clearly sets forth: (i.) The peculiarities of English law which rendered a system of general registration desirable; (ii.) The particular evils which it was considered would be corrected; and (iii.) The anticipated effect of the proposed "general register."

i. The separation of the ownership of land into "legal" and "equitable," which is due to the introduction of uses, and the administration of law and equity in distinct courts, seems to be chiefly responsible for the subsidiary peculiarities in English law which suggested the necessity for a system of general registration.⁷ The Statute of Uses and the Statute of Inrolments, passed in order to prevent secret conveyances by means of uses, failed to accomplish

⁷ Report of 1830, p. 18; Appendix, Mr. Hayes' evidence, p. 364.

their object, and in fact the eventual result of the Statute of Uses was to do away with the necessity, in general, for the old feudal or common law conveyances by livery of seisin.⁸ The Statute of Uses also resulted in the creation of the modern "equitable estate," the difficulties of which have not been diminished, but possibly rather increased, by the present system of administering law and equity in the same court.⁹

ii. The two principal evils referred to in the Report as likely to be remedied by registration are the possibility of defeating just claims by taking a conveyance of the legal estate, and the equitable doctrine of notice. The Commissioners say (p. 55): ". . . the protection which the artificial distinction in the English law between legal and equitable estates enables purchasers, in some cases, to obtain against concealed interests in land . . . has been allowed by courts of equity. . . . It appears to us to be irreconcilable with principle, that in a conflict where both the parties may be equally innocent, and may have used equal caution, the party whose assurance is latest in date should be permitted to avail himself of a merely technical advantage; but assuming this to be defensible under the existing system, it is perfectly clear that no protection should be allowed when the law shall have provided purchasers with the means of ascertaining the existence of prior rights." The equitable doctrine of notice, so far as it postponed a registered deed for valuable consideration to an unregistered one, it was proposed to abrogate completely (p. 36). The evils of the doctrine of constructive notice are referred to by Lord St. Leonards,¹⁰ who says that he "prevailed upon the House of Lords four times to pass a clause limiting the doctrine of implied notice against an innocent purchaser."

iii. The Commissioners, in their "summary statement of the principal benefits . . . produced . . . by a general register," enumerate the following, amongst others (p. 63):—

"1st. Titles will be rendered secure . . .

"2nd. Titles will be simplified; legal estates in trustees will not be kept on foot and transferred after the purpose of their creation shall have been answered; thus there will be only one title to an estate instead of many.

⁸ Report of 1830, p. 18; Appendix, evidence of Mr. Bacon, p. 61. The Real Property Act, 1845, was the outcome of the conveyance by lease and release; and see Jenks' *Modern Land Law*, 443.

⁹ Instances of this seem to be afforded by *Rogers v. Rosegood*, [1900] 2 Ch. 388; *Lewis v. Baker*, [1905] 1 Ch. 46. Modern writers seem to find it impossible to define

an "equitable estate": see, for instance Jenks' *Modern Land Law*, 147; Pollock's *First Book of Jurisprudence* (2nd ed.), 212.

¹⁰ *Vendors and Purchasers* (14th ed.), 783. The doctrine of implied notice is now limited by the Conveyancing Act, 1882, s. 3.

"3rd. Titles will not be exposed to the present hazard from the equitable doctrine of notice. . . .

"10th. Equitable and secondary estates will become marketable."

In estimating the meaning and value of this Report the following points should be borne in mind :—

The technical distinction between legal and equitable interests was not intended to be interfered with.

Every document of title to an interest in land, whether legal or equitable, was to be registered.

The result contemplated was that a beneficial interest should receive the protection which, as the law then stood, the courts would only have given to the technical "legal" interest.

2. In the interval between the Report of 1830 and the Report of the Registration and Conveyancing Commissioners in 1850—the next Report to be considered—it appears that no less than seven Bills on the subject of Registration were introduced into Parliament,¹¹ without any result in the way of legislation. A select committee of the House of Lords having reported on "the necessity of a thorough revision of the whole subject of conveyancing" and of "a registry of title to all real property," a Commission was appointed in 1847, and directed to inquire "whether the burdens on land can be diminished by the establishment of an effective system for the registration of deeds and the simplification of the forms of conveyances."

In their Report, made in 1850, the Commissioners refer to, and adopt generally, the conclusions and recommendations of the Report of 1830,¹² and also follow the latter in recommending registration of assurances as against registration of title. Several schemes for registration of title were strongly pressed upon the notice of the commissioners;¹³ in declining to recommend "judicial registration" they say (p. 36), "Without assuming a previous simplification of the rights in land, the question of the expediency of the system of judicial registration cannot usefully be entertained. . . . We have not thought ourselves warranted . . . in entering into the consideration of the very extensive changes in the law by which such a system of registration must obviously be preceded." The Report does, however, in one respect make a great advance upon the recommendations contained in the Report of 1830. The following passages show the attempt made by the Commissioners to grapple with

¹¹ Report of 1850, Appendix 6, pp. 239-241.

¹² Report of 1850, pp. 4, 7, 33. Appendix 6, p. 232 *et seq.*, contains an historical account of the progress in England of

registration from 1535.

¹³ Report of 1850, Appendix, evidence of Mr. Wilson and Mr. Stewart, pp. 244, 454, 483, 494.

the difficulty of the "equitable estate" and "constructive notice:" ". . . the motives for the establishment of a register do not prevent us from giving full effect to the distinction which the law recognizes between those contracts which are binding on the parties only, and those which bind the land;"¹⁴ after pointing out that the subject of trusts and trustees had not been considered in the Report of 1830, "There appears to be no reason for compelling persons who are satisfied with a personal obligation and personal remedies to obtain a charge upon land, or to secure it by means of registration; . . . land is vested in trustees selected by the parties themselves, and provisions are studiously framed for rendering it unnecessary that purchasers, mortgagees, and others dealing with the trustees, should be concerned to see to the circumstances under which the trust is performed. . . . General experience has shown that the inconvenience, delay, and expense, occasioned to parties interested under trusts by the rules of equity which make the trust a burden on the land, far outweigh the benefit of a protection against the occasional deviation of the trustees in those cases where the operation of the rule is excluded. The efforts of conveyancers in this respect frequently fail, from the extreme difficulty, in some cases, of excluding the doctrine of equity as to constructive notice" (p. 30). "If all the deeds . . . were brought on the register . . . registered titles would become most voluminous and embarrassing. . . . We think the rule should be that a purchaser is not to be affected by a reference in a registered deed to any unregistered document, although the terms of the reference may express or imply the existence of a trust . . . permission should be given to deposit these latter deeds, or authenticated copies of them, in a separate department of the register office" (p. 31). "Provision should . . . be made . . . analogous to the restraining orders and writs of distringas under the 5th Vict. c. 5, applicable to cases of trusts affecting stock. Any person interested in the execution of the trusts of an unregistered deed might be allowed to register a memorandum which would entitle him to notice of the alienation of the land; and, in case of necessity, might be allowed by order of a court of equity to restrain the trustees from alienating" (p. 32).

The Report, in effect, recommends that the interest of a cestui que trust under an express trust shall no longer be a "burden on the land"—an "equitable estate" to be registered as an estate in the land—but a mere right restrictive of the ownership rights of the trustee.

¹⁴ Report of 1850, p. 27. It is obvious that the commissioners were influenced by, and adopted, Mr. Wilson's views, which were based on Mr. Haynes' views in

the Report of 1830: see Report of 1830, Appendix, p. 365; Report of 1850, Appendix, pp. 483, 494.

The evidence of Mr. Robert Wilson (Appendix, p. 483) is noteworthy as containing the account of a plan of registration which he afterwards, when one of the Commissioners who reported on the same subject in 1857, embodied in a separate memorandum to the Report of 1857. The essential feature in Mr. Wilson's plan was to bring about compulsory registration of all land, placing on the register as first proprietors the persons then in possession, and allowing every such proprietor to remain on the register as owner until some one could show a better title, on the analogy of the common law doctrine of the freehold. This suggestion seems to contain the germ of one of the leading principles of the scheme of compulsory registration introduced in 1897.

3. The Report of 1850 resulted in a Bill being framed upon its recommendations and introduced into Parliament in 1853. A select Committee of the House of Commons having advised the appointment of a Royal Commission to deal with the subject, another Commission was appointed in 1854, and instructed "to consider the question of the registration of title with reference to the sale and transfer of land, and generally to inquire into and consider the advantages and disadvantages attending such a system." The Report of these Commissioners was made in 1857, and the Commissioners preface it by stating that "we have availed ourselves of the labours of former Commissioners, especially the Second Report of the Real Property Commissioners in 1832 [*sic*, but should be 1830], and the Report of the Registration and Conveyancing Commissioners in 1850." Accepting the conclusions of these Reports as to the desirability of some system of general registration for interests in land, the Commissioners examine the respective merits of a system of registration of assurances and a system of registration of title, and come to the conclusion that registration of title is to be preferred. The analogy to be followed in devising a suitable system is the method by which "ships, stock in the funds, and railway shares" are transferred, *i.e.* by entry on a register instead of solely by documentary assurances.¹⁵ The principles adopted by the Commissioners in framing the plan recommended are clearly shown by the following extracts from the Report: "If there had always been a register of land, as there is in fact a register of ships, of stock in the funds, and of railway shares, it would be difficult to point out any substantial distinction between property of that description and land, so far as regards the mode and form in which they might respectively be transferred or sold. The distinction between them has arisen, not so much from the different nature of the things themselves, as from the different regulations to

¹⁵ Report of 1857, pp. 4, 10, 16, 23.

which they have been subjected in their origin and in the development of their legal qualities" (para. 41, p. 24). "Equitable interests and trusts cannot, consistently with the objects to be attained by registration of title, bind or affect the ownership of a registered purchaser, unless such interests are of his own creation; but they may be allowed to confer a right against the land whilst in the possession of the owner who created the trusts, or in that of his representatives, or volunteers claiming under him" (para. 50, p. 30). "There are millions of money in the funds, and in railways, canals, docks and other undertakings, left to a great extent in the names of trustees, and yet it has been found that property so circumstanced is practically safe. Can it be believed that what is safe for beneficial interests in such property, when prudently looked after, will be otherwise than safe when applied to land . . . ? The Legislature itself has recognized the principle upon which we proceed, and applied it to property in British ships" (para. 50, p. 31). "All owners or proprietors of land who have the right of possessing, or the power of disposing of it in fee simple, will be at liberty to apply for the registration of the ownership thereof; so that such ownership, or the title to the land which is the subject of the same, may thenceforth be manifested by the register alone" (para. 54, p. 33); ". . . the register ought to be composed of a succession of simple transfers merely, and should manifest only the actual and existing ownership of the land for the time being, without laying open the history or past deduction of it. It ought, in fact, to be a record of the ownership existing at the time of any supposed search of the register. If the register were to disclose, as part of the existing title, the former dealings, it would be found not to afford the requisite relief from the obligation of retrospectively investigating the title" (para. 43, p. 25). "The general effect of the registration here recommended will be that, for the purposes of transfer, the registered ownership will at all times represent the fee simple of the property, and as such will not be capable of any subdivision or modification into partial or limited estates or interests, except so far as charges and leases may also be admitted to the benefit of registration. . . . The right to dispose of and transfer the ownership of the land in fee, including the right to charge and lease the same, will belong and be incident to, and in fact be taken as forming part of, the registered ownership" (paras. 59, 60, p. 35). ". . . the register will be a substitute for the documentary or parchment title. But the registered ownership, whether warranted or otherwise, will remain subject, as the fee simple now is, first, to such other rights as are not usually included in the abstract of title, that is to say, those rights which are incident to the property in a physical

rather than a legal sense, and those which are presumed to attach on all landed property; secondly, also to such rights as may be ascertained by inspection on the land itself, or by inquiry of the occupier" (para. 63, p. 36). "The ownership of land, whether registered or not, will still be subject to various derivative or beneficial interests which will require protection. The distinction between legal and equitable interests is not a mere technical distinction. It is a matter of fact. Its continuance is necessary for the full enjoyment of property. . . . The protection must be provided in some other mode [than putting equitable interests on the register]. . . . Where the parties to a settlement desire it, they will have the power of registering the property in the names of two or more persons as registered owners, with a short note (the words 'no survivorship' will be sufficient), intimating that, in the case of the death of either, the *jus accrescendi* is not to have place. . . . As a further protection, those parties who are entitled to any unregistered interest which, as the law now stands, would render their concurrence necessary in a sale of the fee, will be at liberty to enter in the registry a caveat or inhibition against the transfer of the registered ownership" (paras. 65-67, p. 37). ". . . the protection thus afforded to the beneficiaries of land will be greater than that which is now afforded to the beneficiaries of stock or railway shares . . ." (para. 68, p. 38). "In order to keep up the chain of title, and to prevent the difficulty which might arise upon the death of any registered owner in obtaining a transfer, we think it will be convenient that for the purposes of this measure . . . a real representative should be appointed, upon whom the registered ownership shall devolve" (para. 70, p. 38). "Subject and in subordination to the registered ownership, qualified and explained as we have mentioned, the owners of land, or of the unregistered interests therein, will be at liberty to settle, devise, and deal with the same for the like estates, to the like extent, and generally in the like manner, as by the rules of law and equity they would have been entitled to do if the registration of ownership had not taken place. All the rights of tenants for life or other persons having partial interests will be left unaffected and undisturbed, for the registration will not interfere with the right of beneficial enjoyment and management of the land, and the property cannot be dealt with by the registered owner except when a transfer is, by the absence of a caveat, impliedly permitted" (para. 71, p. 39). "We propose that fraud in obtaining a transfer of the registered ownership shall defeat the title of the person who becomes registered owner by fraud, but that notice of unregistered rights shall not, merely as notice, have any such effect. . . . We concur generally in the reasons adduced by the Real Property Commissioners in

their Second Report, in favour of excluding the interference of Courts of equity on the ground of notice" (para. 73, p. 39). With respect to changes of ownership: "The transfer will be made by deed, and in a short and simple form which the Act will authorize. On proper evidence being adduced before the registrar of the validity of the deed, he will enter in the register the name of the transferee in the place of the transferor. When that has been done the transfer will be complete, and will pass the whole fee simple" (para. 75, p. 41). The Commissioners refer, for practical illustration of their views on a "measure so novel in its character, so difficult in detail," to a sketch Bill drafted by Mr. Lewis and printed in the Appendix, and say (para. 83, p. 43): "In some respects it differs from the recommendations which have been made; in principle, it agrees with them altogether." In this sketch Bill provision is made for dividing all interests in registered land into "registered ownership" and "unregistered ownership," and abrogating the ordinary "legal estate," "equitable estate," etc.¹⁶ The plan recommended by the Report included provisions for two kinds of title, warranted—*i.e.* indefeasible or absolute, and not warranted—*i.e.* possessory or qualified.

The foregoing extracts and remarks sufficiently indicate the nature of the system of registration of title which was proposed. The most striking feature of the Report is, of course, the recommendation of registration of title as preferable to registration of assurances. Many of the changes in conveyancing procedure and substantive law, necessary for the introduction of a practicable system of registration of title, had already been foreshadowed in the Reports of 1830 and 1850; in particular that part of the scheme of 1850 which provided for trusts being no longer a "burden on the land" (*ante*, p. 7), required but a slight extension to become the machinery in the scheme of 1857, by means of which equitable interests were to be kept off the register altogether by being turned, in effect, into personal rights against the owner, and restrictions on the alienation of the land. The scheme of 1857, however, involved a further change, which went to the very root of the substantive law of land, although the necessary effect of the scheme in producing the change is rather implied than explicitly stated in words by the Report. This change consists in the abrogation—so far as relates to land placed on the proposed register—of the necessity for seisin, or whatever may be considered to have been the equivalent of seisin after the Real Property Act, 1845, as essential to the legal ownership of land. The abrogation of seisin is, in effect, the obliteration

¹⁶ Report of 1857, Appendix B., p. 165, called a "sketch," the draft Bill contains clauses 84-88 of sketch Bill. Though 205 clauses.

of the technical distinction between the legal and the equitable estate; and, in erecting "registered ownership" as the criterion of true legal ownership, the scheme of 1857 almost necessarily conferred equal rights on beneficial "ownership" of land—as distinguished from a mere equitable right—and on technical "legal" ownership, or, in other words, conferred the same legal privileges on the beneficial owner as were enjoyed by a "legal" owner in the narrow sense—one who had the technical "legal estate." It seems clear, from the absence of any reference throughout the Report to the equitable fee as distinguished from the legal fee—the expression always used is "the fee simple"—and from the adoption of the principles of Mr. Lewis's sketch Bill, that the Commissioners intended that the fact of a bare legal estate being outstanding was not to hinder the person who was complete owner of the equitable fee from becoming "registered owner." Once on the register, the registered owner was to be able to pass the whole fee simple by a registered transfer, and the transferee would be, in his turn, the "registered owner."¹⁷ A new kind of legal ownership was in fact contemplated—a "new and parliamentary title" (p. 13, *post*)—and equitable ownership was to be cut down to a right of restricting the proprietary rights of the legal owner in lieu of being considered as an actual estate in, or "burden on," the land.

Two more extracts will perhaps serve to point the general nature and scope of the changes advocated in the Report of 1857 (para. 50, p. 29): "We next proceed to consider whether registration of the legal ownership will be compatible with due protection of the equitable or beneficial interests in land. . . . We should be able to rely . . . on our ancient law as affording for the present purpose a wise and useful precedent; for just as the feudal law required that the freehold should always be filled by one capable of contributing to national defence, and performing the duties of a feudal follower, so the spirit of commerce now demands that for its purposes also the fee simple in land shall always be represented and be in the possession of persons capable of fulfilling those new duties and offices which the ownership of land in the present state of society entails or involves."

Para. 89, p. 45: "The advantages of the system will consist in giving facilities for the sale and transfer of land in the following respects:—

"1. It will secure the principal benefits and advantages sought to be attained by a system of registration of deeds.

¹⁷ See p. 35, paras. 59 and 60 of the Report. The view, that the possession of the ordinary "legal estate" was unimportant for the purposes of "registered

ownership," seems to have been adopted both in the subsequent Report of 1870, and in the Acts which were framed upon the Reports of 1857 and 1870.

"2. The system will render unnecessary retrospective investigation of the title, as to all dealings subsequent to the commencement of the registration, and will gradually operate to dispense with such investigation altogether.

"3. It will simplify the title to real property for the future (though it will not, except where warranty is obtained, confer at the outset a parliamentary title as against interests existing anterior to the registry), and it will have this effect even though it should happen that no concurrent improvements are made in the general law of real property.

"4. It will make purchasers of the fee and leases perfectly secure.

"5. It will simplify to the utmost possible extent the forms of transfer and the modes of conveyance. . . .

"8. . . . One of the important advantages of a new and parliamentary title is found in the great facility it confers for the subdivision of estates upon a sale."

The Report was not signed by Mr. Robert Wilson, one of the Commissioners who had given evidence before the Commission of 1850 (*ante*, p. 8), but Mr. Wilson embodied his suggestions in a separate memorandum (Appx., p. 83). He was in favour of compulsory registration of the land, without any warranty of title, placing on the register as first proprietors the persons who were in possession as apparent owners. This plan, as already stated, contains the germ of the present compulsory registration with a possessory title. One passage is as follows (p. 84), italics being his own: "If the possessory title to land is not a fee simple, what is it? . . . We thus find in the title to landed property *an apparent ownership in perpetuity, existing as a manifest fact prior to any examination of documentary evidence confirming or curtailing it.* . . . A little more than three centuries ago this apparent ownership was the most prominent feature in the title to landed property."

4. Two Bills, framed upon the recommendation contained in the Report of 1857, were introduced into the House of Commons in 1859, one of them being the Land Registry Bill, 1859, but had only reached a second reading when Parliament was dissolved.¹⁸ Subsequently the Land Registry Act, 1862,¹⁹ was passed. Although based upon the Report of 1857, the Act of 1862 aimed at setting up a much more comprehensive system, and in fact combined registration of assurances with registration of title.

Its provisions were found unpopular and unworkable, and in

¹⁸ Report of 1870, pp. x., xl. paras. 4-6. The Land Registry Bill, 1859, is referred to later on in connexion with the history of s. 49 of the Land Transfer Act, 1875.

¹⁹ 25 & 26 Vict. c. 53, otherwise known as Lord Westbury's Act, and the Land Transfer Act, 1862. The official short title is conferred by the Short Titles Act, 1896.

1868 another Royal Commission was appointed to inquire, amongst other things, into the operation of the Land Registry Act, 1862. The Commissioners' Report was made in November, 1869, and is generally known as the Report of 1870. Like their predecessors these Commissioners "made the freest use of" the earlier Reports, and they also quoted largely from, and expressly adopted most of the recommendations of, the Report of 1857. The Report points out the difference between the system introduced by the Land Registry Act, 1862, and the system proposed by the Report of 1857; ". . . these Bills of 1859 . . . proceed in their most material respects on the principles advocated by the Report of 1857. Great care is taken not to establish anything like a registry of assurances; the system of registration and transfer is assimilated, as nearly as the subject-matter admits, to the system regulating title to stocks; and partial interests are left to be protected by cautions and notices" (p. xi. para. 6). "With respect to the nature of the title to be registered, and the multiplicity of interests to be noticed, the legislation of 1862 has aimed at a much more comprehensive system of registration than was proposed either in 1857 or in 1859" (p. xiii. para. 8). The conclusion come to is that the system established in 1862 has failed, and that its evils "are directly and visibly traceable to the main principle of the Act, that is to say, to the necessity which it imposes of—

A., showing a marketable title;

B., defining boundaries;

C., registering partial interests" (p. xxiv. para. 58).

The Commissioners then proceed to suggest remedies, making "the freest use of the . . . Report of 1857," and having before them the draft Bill for amending the Act of 1862, and other suggestions from the Land Registry officers.²⁰ "The nearest analogies that we have for our guidance are the registers of stock and ships. Here we have properties subject to English law and customs, and properties which are, in some important respects, situated as land is. . . . We therefore recommend that in analogy to the registration of stock only those who represent absolute ownership shall be placed on the register, and that all partial interests shall be kept off the register, and protected only by a system of cautions or stops. . . . And when we speak of 'absolute ownership' or 'fee simple,' we do not mean that the act of registration is to transfer what is technically called the legal estate, but that the registered owner shall, for all purposes of transfer to

²⁰ Report of 1870, p. xxv. para. 59. The draft Bill is printed at p. 86 of the Appendix, and is referred to later on in con-

nexion with the history of s. 49 of the Land Transfer Act, 1875.

purchasers, represent and have power to deal with all legal and beneficial interests. In this we only follow the Report of 1857, and the plan embodied in the Bill of 1859. We cite and adopt the language of the Report of 1857" (pp. xxvi., xxvii. paras. 65, 66). Paragraphs 43-45 of that Report (*ante*, p. 9) are there quoted. In quoting at length from the Report of 1857, the Commissioners—though not unanimously—expressly dissent from the recommendations made in 1857 that charges and leases should be registered. On this point the views of the minority, with respect to the registration of charges, are set out separately.²¹ Leasehold interests under leases of not more than twenty-one years were to be protected by special notice, but "leases, if beneficial and originally exceeding the term of twenty-one years, should be considered as absolute ownerships entitled to registration" (pp. xxvii., xxviii. paras. 69, 70). "One necessary complement of the system we recommend is, that when the registered owner dies, a representative shall be entered in his stead. This will either be his executor, or some person agreed on by persons interested in the property, or appointed by the Court of Chancery. This plan was contemplated by the Bill of 1859" (p. xxviii. para. 73). The advantages of registration, even without an indefeasible title, in strengthening the validity of the title by lapse of time, are clearly set out (pp. xxviii., xxix. paras. 75-78). The protection of equitable interests is thus referred to (p. xxix. para. 81): "If it be provided that the registered owner shall, for all purposes of conferring title on an honest purchaser, be deemed the true owner, that is sufficient for the purchaser. But persons who have partial interests in the estate, and are not on the register, might be injured if not protected with due care. We only follow others in advising that unregistered interests should, as in the case of stock, be protected by a system of notices. This was provided for by the Bill of 1859." "The classes of interests which must be protected by notice, are equitable estates, jointures, legacies, mortgages, and also leases other than occupation leases" (p. xxx. para. 83). "The other owners of unregistered interests should be entitled to place stops on the register" (para. 85). "In many cases, too, of settled estates, the interests of equitable owners will be provided for in a more simple way than by stops. The land being vested in trustees as registered owners, a note might be appended, intimating that there was no survivorship among them, or at least that the title should not devolve on a single one. If then only one survived, the registrar would not permit any transfer till another was appointed, so that there never would be a single trustee" (p. xxxi. para. 91).

²¹ Report of 1870, pp. xxxviii.-xli., memoranda by the dissenting commissioners.

The memoranda appended by the dissenting Commissioners are chiefly directed to the subject of mortgages, and they considered that the analogy of ship registers should be followed in this respect. A system of registered charges was advocated: "The establishment of a register of charges affords, moreover, an opportunity for doing away with our present anomalous system of mortgages, under which the mortgagee is in law the owner of the land when, in fact, he is only owner of money for which the land is security. By means of a registry of charges the mortgagee can be placed in his proper position as owner of a charge merely, with all powers requisite to enforce his charge, and there appears to be no reason why . . . every charge should not carry with it a power to receive rents, and a power of sale; the latter when exercised by a first mortgagee should operate to place a new owner on the register, or when exercised by a second or subsequent mortgagee, should operate to place such new owner on the register, subject to all prior mortgages not discharged out of the purchase-money, just as at present happens on a sale by a mortgagee under his power."²²

Provision for the registration of charges, here recommended by the minority of the Commissioners, was made in the draft Bill already referred to (*ante*, p. 14), and the Commissioners seem to have approved of this Bill in all other respects, except as regards the proposals for setting up a new tribunal, and for establishing a sub-record.²³

The scheme recommended by the Report of 1870—including the recommendations of the dissenting Commissioners—is identical with that recommended by the Report of 1857. The Act of 1862 was to be altered by "the introduction of a new registry to include only fee simple and leasehold titles, and without any record of title."²⁴ The subject of registered charges is, however, dealt with in greater detail in the 1870 than in the 1857 Report, and the change in substantive law with respect to the "legal estate," already referred to as implicit in the scheme of 1857, appears to be implied more clearly in the Report of 1870; the passage in para. 66 of the latter, already quoted (*ante*, p. 14), to the effect that a registered "fee simple" is not identical with the technical "legal estate," can only mean that legal ownership is to be constituted by entry on the register, and not by anything answering to seisin.

As already pointed out (*ante*, p. 3), the four Reports of 1830, 1850, 1857, and 1870 form a continuous series, and each of the three

²² Report of 1870, Mr. Wolstenholme's dissent, p. xlv. para. 13.

²³ Report of 1870, pp. xxv., xxviii. paras. 59, 60, 71, 72.

²⁴ Report of 1870, p. xxviii. para. 72.

This is also substantially the difference between the Australian legislation on the subject which preceded the Torrens Statutes proper and those statutes: see Hogg's Aust. Torrens Syst., 21, 22.

later Reports refers to and carries on the work of its predecessors. The object of the labours of each Commission—so far as connected with the Reports under consideration—was the same, *i.e.* to devise a system of general registration, and each grappled with the question in the same way, *i.e.* by regarding the necessity for registration as caused by the separation of ownership into legal and equitable, and treating registration as the remedy for evils which were the result of this dual ownership. The chief evil connected with the legal estate was want of publicity in conveyance; the chief evil connected with the equitable estate was the doctrine of notice. The principle underlying all the schemes of registration suggested or recommended as likely to remedy these evils is the same, *i.e.* that certain rights of property in land should become true legal ownership, and be fully protected by law, only when evidenced by entry on the appropriate register, independently of their creation as “legal” or “equitable” estates. The gradual advance in the plans recommended (*ante*, p. 3), from registration of assurances to registration of title, seems to be due to the view that a complete system of registering every equitable interest was impracticable; the alternative system—registration of title to legal ownership only—involved a readjustment of the technical relation between legal and equitable interests. This readjustment appears to consist of three parts: (1) Levelling down, as it were, the legal estate; (2) Levelling up so much of the equitable estate as consists in an absolute right to have the legal estate; (3) Turning the residue of the equitable estate into rights against the land and its legal owner restrictive of the latter’s full rights of ownership. In one sense, *i.e.* in so far as in some cases the technical distinction between legal and equitable estates is abrogated, this change may be said to be an amalgamation of legal and equitable estates so far as relates to the method of enforcing the classes of rights for which those estates are merely general names. The change is, in fact, closely analogous to the change in procedure effected by the Judicature Acts, which have not obliterated the distinction between the legal and equitable estate, but merely given the Courts a “double jurisdiction.”²⁵ With this readjustment between the legal and equitable estate is also involved an assimilation of the law of land to the law of personalty—of feudal tenure to allodial ownership, since personalty is necessarily allodial, as being held of no superior.²⁶ The whole scheme of registration of title is avowedly framed on the analogy of registers of personal property; the specific suggestion that on the death of a registered owner a

²⁵ *In re Scott and Alvares' Cont.*, [1895] 2 Ch. at 614; *Manchester Brewery v. Coombs*, [1901] 2 Ch. at 617.

²⁶ *Burgess v. Wheate* (1759), 1 Eden,

at 229 (Lord Mansfield); Erskine’s *Principles of the Law of Scotland* (20th ed.), 132.

representative other than the heir or devisee should be appointed and placed on the register as owner, necessarily involves the abandonment of the perfect continuity of title from tenant for life to remainderman, and from ancestor to heir, etc., which is the outcome of the feudal structure of English land law. The distinction between the fee simple and a term of years—even for 1000 years—is, by this feudal structure, a vital distinction, and not merely a difference in quantity of estate; under the proposed scheme of registry of title, a leasehold was to be treated as “ownership,” only differing in quantity from a fee simple; in fact the non-technical and substantial difference between the two—*i.e.* that one was an estate for years, and the other an estate in perpetuity—was intended to be, as far as possible, the legal distinction between them. A better instance of the intention displayed in the Reports of 1857 and 1870 to abrogate, as far as possible, merely technical distinctions can hardly be afforded than by the proposal that a “power to dispose of” the fee simple shall entitle the person invested with the power to become registered proprietor.²⁷ In another, and perhaps less obvious, direction the feudal structure of our land law would be somewhat impaired. Without forcing the expression “absolute ownership” into meaning anything else than “fee simple estate,” it is clear that a system which recognizes as legal ownership only estates in fee simple and “leases” for lives or years, and allows minor estates for life and years only to be protected by notice on the register, as interests less than legal ownership—in effect as incumbrances on the ownership, is approximating to a system of allodial ownership of land in the technical sense, such as obtained in Roman law, and now exists in South Africa, where servitudes frequently take the place of English limited ownership. The difference between the English estate for life and the Scottish life-rent²⁸ is an illustration of the tendency here referred to.

SECTION 2.—THE SCHEME OF THE LAND TRANSFER ACTS AND RULES.

The Land Transfer Act, 1875, has been amended by the Land Transfer Act, 1897, and the first Land Transfer Rules are now superseded by the Land Transfer Rules, 1903. It will be convenient, first of all, to state shortly the scheme of the 1875 Act without reference to subsequent amendment, since this amendment

²⁷ Report of 1857, p. 33, para. 54; Report of 1870, p. xxviii, para. 75.

²⁸ See Bell's *Principles of the Law of Scotland* (8th ed.), para. 1037; Erskine's *Principles* (20th ed.), 213. The

system of registration of title in Fiji affords an illustration of the Scottish life-rent being introduced by statute into English law: Hogg's *Aust. Torrens Syst.*, 668.

has not affected the main principles of the 1875 Act; the chief substantive changes of law refer to the method of placing settled land on the register, the effect of Statutes of Limitation, compulsory registration, and indemnity for loss through wrongful registration.¹ The change effected by the 1897 Act in the law of succession to land on death is part of the general law, and is not confined in its application to registered land.

The 1875 Act is divided into a preliminary group of sections, and five Parts. Among the preliminary sections is an enactment (s. 2) excluding, in effect, copyhold land from the operation of the new system. This is in accordance with recommendations made in some of the four Reports, though not referred to specifically in the Report of 1870.²

Part I. relates to "entry of land on register of title." Provision is made for registration of land, either "freehold" or "leasehold," with an "absolute," "qualified," or "possessory" title.³ A person beneficially entitled "at law or in equity" to an estate in fee simple, or to "leasehold land," or having power to dispose of an estate in fee, or leasehold land beneficially, may be placed on the register as "proprietor" of the "freehold land," or the "leasehold land" (ss. 5, 11); the expression "proprietor of the fee simple" also occurs, but is not very generally used. The effect of this "registration" of a person as "proprietor of freehold land" with an "absolute title" is (s. 7) to "vest" in him an "estate in fee simple," subject only—and to the exclusion of all other rights, even of the Crown—first, to incumbrances entered on the register; secondly, to rights and liabilities (s. 18) which may be shortly described as the ordinary rights and liabilities subject to which every owner of the fee holds his land, viz. public burdens, easements, and occupation leases; and thirdly, when the proprietor is not entitled for his own benefit "as between himself and any persons claiming under him," to the "estates, rights, interests, or equities" of such persons. Registration with a "qualified" or with a "possessory" title is to have the same effect as registration with an "absolute" title, save only (ss. 8, 9) that the qualified or possessory title is not to "affect or prejudice the enforcement of any estate, right, or interest"—in the case of qualified title—"excepted from

¹ It is somewhat remarkable that the Land Transfer Act, 1875, should, whilst providing for a warranted title, have contained no provision for making good losses sustained through wrongful registration. The only other system of registration of title in the empire where the title is warranted, and no provision made for indemnity, seems to be the system established in Fiji—a form of the Australian

Torrens system—in 1876: Real Property Ordinance, 1876 (1876, No. 34), printed in Hogg's Aust. Torrens Syst., 668.

² Report of 1830, p. 28, see *ante*, p. 4; Report of 1857, para. 53, p. 83.

³ This statement is sufficiently correct for the present purpose; registration of leasehold land was subsequently more nearly assimilated to that of freehold land by the 1897 Act.

the effect of registration," or—in the case of possessory title—"adverse to or in derogation of the title" of the proprietor at the time of first registration. The effect of registration of a person as "proprietor of leasehold land," with an "absolute"—i.e. a warranty of his lessor's—title,⁴ is (s. 13) to "vest" in him "the possession of the land" comprised in the lease "for all the leasehold estate therein described," subject only to the liabilities "incident to such leasehold estate," and to the same liabilities as have been mentioned in the case of freehold land. Registration with less than "absolute" title is to have an effect analogous to registration of freehold land with qualified or possessory title.⁵

Part II. relates to "registered dealings with registered land." These dealings consist of four only: mortgage or charge; transfer of land; transfer of charge; transmission of land or charge on the death, bankruptcy, or—in the case of a woman—marriage of a proprietor. The registered proprietor of land may mortgage his land—or in the words of the Act "charge" it—in the prescribed manner (s. 22), the charge being "completed by the registrar entering on the register the person in whose favour the charge is made as the proprietor of such charge." The proprietor of the charge (ss. 23–28) has conferred upon him statutory powers for enforcing his security, such as are in practice usually conferred on mortgagees by ordinary deed of mortgage; the charge ceases to operate when cancelled on the register, which is to be done on proof of its having been satisfied. The registered proprietor of land, or of a charge, may transfer the land—or, in the case of leasehold land, "the whole of his estate in such land"—or the charge, in prescribed manner (ss. 29, 34, 40).

In each case the transfer is to be completed by the "registrar entering on the register the transferee as proprietor of the land transferred" or "the charge transferred;" until the name of the transferee is so entered, "the transferor shall be deemed to remain proprietor of the land" or "of the charge." The effect of a transfer for valuable consideration of land registered with an absolute title is, when registered, to confer on the transferee "an estate in fee simple" in the case of freehold land, and "the possession of the land transferred for all the leasehold estate described in the registered lease" in the case of leasehold land, subject only to the incumbrances entered on the register, and to the general rights and liabilities before referred to as set out in s. 18, and also in the case of leasehold land to the liabilities "incident to" the leasehold estate (ss. 30, 35); on the transfer of leasehold land there are, in addition, to be implied reciprocal covenants between transferor and transferee with respect to the covenants in the lease (s. 39).

⁴ See note 3.

⁵ See note 3.

Where the title is less than absolute, the transfer is not to "affect or prejudice the enforcement of any right or interest" preserved on the first registration of the land (ss. 31, 32, 36, 37).⁶ The effect of a transfer without valuable consideration differs only "so far as the transferee is concerned," being, as regards the transferee, "subject to any unregistered estates, rights, interests, or equities, subject to which the transferor held the same," but otherwise having "the same effect as a transfer of the same land for valuable consideration" (ss. 33-38). Where a case of "transmission" arises—*i.e.* where the title to the land or charge would, but for the register, have vested in a successor by reason of the death, bankruptcy, or—if a woman—marriage, of the registered proprietor—provision is made (ss. 41-45) for the registration, "in the place of" the proprietor appearing on the register, of the person "entitled according to law" to be so registered.

In the case of the death of the registered proprietor of leasehold land or a charge, the person so entitled to be registered is the executor or administrator (s. 42). By s. 46, "Any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge . . . upon the trusts and for the purposes to which the same is applicable by law, and subject to any unregistered estates, rights, interests, or equities, subject to which the deceased or bankrupt proprietor held the same; but, save as aforesaid, he shall, in all respects, and in particular as respects any registered dealings with such land or charge, be in the same position as if he had taken such land or charge under a transfer for a valuable consideration."

Part III. is concerned with "unregistered dealings with registered land." S. 49 allows the creation of unregistered "estates, rights, interests, and equities," but "subject to the maintenance of the estate and right" of the registered proprietor, and these unregistered interests may be protected by entering on the register notices, cautions, inhibitions, or restrictions. Ss. 50-59 are devoted to the details of these four methods of protecting unregistered interests. "Notices" of leases, estates in dower, and estates by the curtesy, are contemplated as being "registered," and the effect of this "registration" is that the registered proprietor, and persons deriving title through him, are "deemed to be affected with notice of such lease . . . as being an incumbrance on the land" (s. 50); in the case of dower and curtesy (s. 52) "such estate shall be an incumbrance appearing on the register." Cautions (ss. 53-56) may be lodged in order to prevent dealings with the registered land or charge, and the effect of a caution is that no dealing can be

⁶ See note 3.

registered without the cautioner receiving notice, and thus having the opportunity of asserting his rights. An inhibition (s. 57) is an order or entry on the register, made by the Court or the registrar, inhibiting dealings with registered land or charges. A restriction (ss. 58, 59) is a direction, given by a registered proprietor and entered on the register, to the effect that no dealing is to be registered unless on certain specified conditions.

Part IV. consists of "provisions supplemental to foregoing parts of Act." The following only need be noticed here. Provision is made (s. 68) for trustees, and other persons having powers of sale, becoming registered proprietors with the consent of the persons beneficially interested. It is also provided (s. 83) that notice of trusts is not to be entered on the register, but when two or more persons are registered as proprietors, dispositions of the land or charge must be effected by not less than a certain number. Restrictive conditions (s. 84) may be annexed to land so as to bind successive proprietors. The Trustee Acts (s. 85) are to apply to registered land and charges. The Court (s. 95) may order rectification of the register where it decides that any person is entitled to an interest in registered land. Subject to the effect of registered dispositions for valuable consideration (s. 98), any fraudulent or void disposition is to be fraudulent or void, notwithstanding registration. The right of the Crown (s. 105) to escheat or forfeiture is not to be affected.

Part V. is headed "Administration of law and miscellaneous." By s. 111, rules may be made as to the mode of keeping the register, the forms to be observed, costs, etc. The first Rules of December 24, 1875, made under this authority, deserve notice by reason of the fact that they did not make it necessary that the prescribed statutory instruments of transfer should be under seal.

As has already been stated (*ante*, p. 18), the main principles of the 1875 Act have not been altered by the 1897 Act, and the scheme thus shortly set forth above remains, in all essentials, the scheme of the system as contained in the present Acts and Rules. Before proceeding to describe the alterations subsequently effected in the 1875 Act, the scheme of the latter will be better understood by noticing how it compares with the scheme recommended in the Report of 1870—reading that Report in the light of its relation to the three previous Reports of 1830, 1850, and 1857, and also bearing in mind the observation of the Commissioners, that they "are not framing a bill, but advising on the general principles of legislation."⁷

The 1875 Act is modelled on the Land Registry Bill, 1859 (*ante*, p. 13), the Land Registry Act, 1862, and the draft Bill before

⁷ Report of 1870, p. xxxi. para. 90.

the Commission of 1870 (*ante*, p. 14), modified in accordance with the views of the Commissioners. The expression "registered proprietor" is adopted from the Bill of 1859 and the Act of 1862, as the equivalent of the "registered owner" of the Reports of 1857 and 1870. Although "proprietor" is more generally found in statutes relating to personalty, such as stocks, than in statutes relating to land, yet the word is commonly used in Scottish law as equivalent to owner, and is to be found in some English statutes; an instance occurs in s. 35 of the Land Drainage Act, 1861. The language of the 1875 Act throughout, in using the expressions "fee simple," "estate," etc., without the addition of "legal" or "equitable," and avoiding the use of "legal" or "at law" otherwise than in the general sense of "valid" or "lawful"⁸ as applied to estates in land when once placed on the register,⁹ agrees with what appears to have been the intention of the Report of 1870—to place the "legal estate" in its technical sense in abeyance altogether for practical purposes¹⁰ (*ante*, p. 14).

In Part I. of the Act the provisions for placing land on the register either as freehold or leasehold, and with either an absolute title or a title less than absolute, agree with the scheme of 1870 (*ante*, pp. 9, 15). So also the provisions as to the title of the proprietor, when registered, being a fee simple—or leasehold, as the case might be—subject only to incumbrances appearing on the register, certain general rights and liabilities, and rights (s. 7) "as between himself and persons claiming under him" (*ante*, pp. 9, 15).

The provisions of Part II. represent the recommendations both of the majority of the Commissioners of 1870 and of the dissenting minority, inasmuch as—in accordance with the views of the latter—mortgages, as well as transfers of ownership, may be registered, and the effect given to the statutory "charge" follows the recommendations of the minority Report (*ante*, p. 16). With respect to the method of transfer, etc., the Act is not nearly so explicit as the Reports of 1857 and 1870; the Report of 1857 recommended that a statutory form of deed by which transfers, etc., could be carried out should be authorized, and this recommendation appears in a concrete form in the Land Registry Bill of 1859 and the Act of 1862, the latter of which does (Schedule 1) authorize a short form of deed. This provision is omitted altogether from the 1875 Act, and nothing whatever in the way of detail is enacted as to the method of carrying out transactions leading up to changes on the

⁸ In s. 84 the word "legally" occurs, evidently meaning "validly."

⁹ In ss. 5 and 11 the words "at law or in equity" occur, but only with reference to land before it has been placed on the register.

¹⁰ It is not, of course, intended to imply that in the case of a "possessory" title an outstanding legal estate is over-ridden. The view here suggested is referred to at greater length later on.

register. With respect to the registration of a successor on the death of a proprietor (ss. 41, 42), this accords in principle, though not completely in detail, with the suggestions of the Report (*ante*, p. 10). The effect given to a transfer for valuable consideration duly completed by registration of the transferee, as conferring a perfect title on a *bonâ fide* purchaser notwithstanding the existence of beneficial rights in other persons as between them and the proprietor, is exactly as suggested in the Reports of 1857 and 1870 (*ante*, pp. 9, 15).

The subject of Part III.—unregistered dealings and their protection—is referred to in the Report of 1870 in a general way only (*ante*, p. 15), in the course of pointing out that equitable rights could be protected by notices, cautions, and stops. Unregistered dealings, however, are more specifically referred to in the Report of 1857, and are expressly provided for in the Land Registry Bill, 1859, and in the Act of 1862, and also in the draft Bill considered in the Report of 1870. As already stated (*ante*, p. 21), s. 49 allows the creation of unregistered interests, and the remaining sections state in detail how these may be protected. It may be observed that those provisions, under which (ss. 50, 52) certain interests, though in one sense “estates,” are styled “incumbrances” on the proprietorship, carry into effect what has already been referred to as a readjustment of the relation between legal and equitable interests, and an approximation to the law of personality (*ante*, p. 18).

Since the provisions of s. 49 are not treated with much particularity in the Report of 1870, and the section is one which appears to cause great difficulties in the interpretation of the Acts and Rules—to be dealt with at length later on—it will be convenient to give an account of its origin and development. In paragraph 71 of the Report of 1857 (*ante*, p. 10), it is pointed out by the Commissioners—though not, apparently, by way of suggestion for positive enactment—that “subject and in subordination to the registered ownership . . . the owners of land, or of the unregistered interests therein, will be at liberty to settle, devise, or deal with the same” as if no registration had taken place; a clause in almost the same language appears in Mr. Lewis’s sketch Bill (*ante*, p. 11). On this appears to be founded s. 46 of the Land Registry Bill, 1859, printed in the note below, which appeared in a somewhat different form as s. 74 of the Act of 1862: “Every person having a sufficient estate or interest in registered land may, by will, deed, or other instrument create the same estates and interests in, and enter into the same contracts and engagements with respect to, such land as he might do if the land were not registered: provided

always that no unregistered estate or interest, contract or engagement, for the registration whereof provision is made by this Act, shall prevail against the title of any subsequent purchaser for valuable consideration duly registered under this Act." In the draft Bill of 1870 (*ante*, p. 14) this is represented by s. 74.¹¹ It will be noticed, in comparing the two sections from the Bills of 1859 and 1870, printed in the note below, with the corresponding sections in the Act of 1862 (s. 74) and the Act of 1875 (s. 49), that the Bill of 1870 returns to the form of the enactment in the Bill of 1859, and that the Act of 1875 approximates still more closely to the recommendation in the Report of 1857—by inserting the words "subject to the maintenance of the estate and right of such [registered] proprietor." The effect of this saving clause seems to be that the scheme of the 1875 Act is, on this point, brought into agreement with the scheme of the Reports of 1857-1870; the intention of the latter that, when land was once on the register, no interest which could properly be called a "legal" estate should be brought into existence on the same plane of validity as the "legal ownership" constituted by registered proprietorship, has already been referred to (*ante*, p. 23).

With respect to the supplemental provisions of Part IV., the provision as to notice of trusts being kept off the register (s. 83) is part of the scheme of 1857-1870, and the "no survivorship" provision is definitely recommended (*ante*, p. 15). The enactments contained in ss. 83 and 98 as to notice of trusts, and as to fraud, are the only explicit enactments on the subject of notice, though this subject was considered of great importance, and dealt with at

¹¹ Report of 1870, Appendix, p. 91. The following is the text of the enactment as it appeared in the Bills of 1859 and 1870:—

Bill of 1859, s. 46.

The registered proprietor alone shall be entitled to transfer or charge property by a registered disposition; but any person, whether the registered proprietor or not, having a sufficient estate or interest in registered land, may by any unregistered lease, settlement, will or other instrument, create the same demises, estates for life, estates tail, or other estates and interests, as he might create if the land were not registered; and any lessee or other person entitled to or claiming any right in such estates or interests may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions, or other restrictions as are hereinafter mentioned; but, subject to any notice of leases, no purchaser for valuable consideration of any registered land, or registered interest in land, shall be affected by any notice, express, implied, or constructive, of any unregistered disposition.

Bill of 1870, s. 74.

The recorded proprietor alone shall be entitled to transfer or charge property by a recorded disposition; but any person, whether the recorded proprietor or not, may by any unrecorded lease, settlement, will, or other instrument, create the same demises, estates for life, estates tail, or other estates and interests as he might create if the land were not recorded; and any lessee or other person entitled to or claiming any right in such estates or interests, or any other person having any estate or interest in recorded land, or in any charge thereon, may protect the same from being impaired by any act of the recorded owner by entering on the record such notices, cautions, inhibitions, or other restrictions as are mentioned in this Act in that behalf. . . .

some length, in the first three Reports (*ante*, pp. 5, 7, 10). The enactments, however, which in Parts I. and II. purport to define the legal position of the registered proprietor—original or on transfer—seem to be intended to carry out the recommendations of the Reports, to the extent at any rate of abrogating the doctrine of constructive notice, and the principal question which would arise under the 1875 Act is how far actual notice—not of the mere fact of a trust existing, but of unregistered interests being really endangered—is “fraud.” The enactment (s. 95) as to rectification of the register, under proper circumstances, seems intended to provide machinery for the “enforcement” of rights “excepted from registration” which the Reports of 1857 and 1870 contemplated as existing, particularly where the registration was not with “absolute” title (*ante*, pp. 10, 15).

Nothing is said in the four Reports on Registration as to the rights of the Crown. These are, however, referred to in the 1875 Act, and, following the Land Registry Act, 1862, and the draft amending Bill of 1870, these rights are bound by registration in the same way as the rights of subjects (ss. 7, 13, 66). By s. 105, however, the Crown's rights of escheat and forfeiture are expressly preserved, and this express enactment seems intended to indicate, if indeed such indication were necessary, that this binding of the rights of the Crown is not to take away the prerogative title of the Crown to land, and that the fundamental principle of English land law—feudal tenure, or tenure of a superior—remains unaffected, in theory, notwithstanding the abrogation of nearly all the rules relating to alienation of, and succession to, land which have feudal tenure as their only logical foundation. The Real Property Commissioners, who reported in 1830 on Registration, also reported in 1832 on the subject of Tenures, and the question of abrogating the prerogative title of the Crown was dealt with by them. They say: ¹² “On this subject the first question to be considered is, whether it be advisable to retain the principle of law upon which the absolute property or dominium directum of all lands is vested in the Crown, and which supposes all lands in the hands of a subject to be held of some superior under certain conditions, by virtue of an original grant. This is the fundamental principle of tenure, and some persons of great learning have proposed that it should be abolished, and that all lands should become allodial. We feel no hesitation, however, in recommending that it should be retained.” “There is no difference, in the practical result, between lands being supposed to be allodial, to vest for want of heirs in the State as *ultimus heres* . . . and lands being supposed to have been granted by the State,

¹² Third Report of Real Property Commissioners, 1832, pp. 3, 5, 8.

to be enjoyed while heirs continue, and to revest in the State for want of heirs. . . ." "Free and common socage . . . has all the advantages of allodial ownership. The dominium utile vested in the tenant comprises the sole and undivided interest in the soil. Escheat is the only material incident of this tenure beneficial to the lord, and while there is an heir or devisee he can in no way interfere."

With reference to Part V., and the enactment conferring rule-making authority (s. 111), the scheme of the Act, as already stated, differs from the schemes of 1857-1870 in treating the forms and methods of effecting transfers and charges purely as matters of detail, to be regulated by Rules; particular forms of instruments under seal, and in which technical words are used—as is done by the Land Registry Act, 1862¹³—are not prescribed, and the possibility of such instruments operating as assurances independently of registration was thus lessened. The forms of instruments prescribed in the first Land Transfer Rules of 1875, were not under seal, and did not contain technical words of limitation or otherwise.¹⁴ The Rules of 1875 were superseded in 1889 by fresh Rules.

The Land Transfer Act, 1897, was not the result of any Royal Commission's Report, and—as already stated (p. 19)—does not alter the main principles of the 1875 Act. Some reference to changes in the law, effected by legislation in the interval between the passing of the Acts of 1875 and 1897, certainly seems permissible;¹⁵ how far the various inquiries, returns, and inchoate legislation relating to the subject, which saw the light during that interval, would be allowed consideration directly in construing the 1897 Act—and inferentially the 1875 Act—it is very difficult to say.¹⁶ Adopting a phrase used in *Hardcastle on Statutes* (p. 140) the perusal of the Parliamentary papers containing these inquiries, etc., certainly "supplies useful hints as to the intention of the draftsman" of the 1897 Act, and a reference to the contents of these Parliamentary papers may, therefore, prove of some practical use; in particular, the relation of the English Acts to the Irish Acts on the same subject will be made clearer by the reference, and the existence of analogies between the system set up by the English Acts, and other systems of registration of title, is also brought into prominence.

The 1875 Act was assented to a few months before the Judicature Acts came into operation. In 1881 and 1882 the Conveyancing

¹³ The five forms in the schedule are all under seal, and two of them are "grants" to "C. D. and his heirs" of the land to be transferred or mortgaged.

¹⁴ The Rules of December 24, 1875, were 64 in number, with 37 Forms. Their simplicity is illustrated by com-

parison with the Rules of 1903, 345 in number, with 72 Forms.

¹⁵ See *Eastman Photographic Co. v. Comptroller-General*, [1898] A. C. 571, cited *ante*, p. 2.

¹⁶ See *Hardcastle on Statutes* (3rd ed.), 139, 140.

Acts, Settled Land Act, and Married Women's Property Act, became law; all these Acts have been since amended. In 1883 the Bankruptcy Act was passed. In addition to these Acts, other Acts were passed relating to partition, contingent remainders, charges on land, voluntary conveyances, small holdings, copyholds, trustees, lunacy, tithe rent-charge, mortmain, and charities.

The Parliamentary papers referred to above were printed at intervals from one to six years, continuously from 1872 to 1896; the following is a list of them :—

1872—Parliamentary Return on Registration of Title in Australian Colonies.

1874—Report of Commission of 1872 in South Australia on (*inter alia*) the Real Property Act.

1878—Report of Evidence taken by Select Committee of House of Commons on Land Titles and Transfer.

1879—Report of Select Committee of House of Commons on Land Titles and Transfer.

1881—Parliamentary Return on Registration of Title supplementing the Return of 1872 above-mentioned.

1887—House of Lords Land Transfer Bill: Reports on Registration of Title in Prussia and Hungary.

1888—House of Lords Land Transfer Bill.

1889—House of Lords Land Transfer Bill.

1895—Report of Evidence taken by Select Committee of House of Commons on Land Transfer Bill, 1895.

1896—Report on Registration of Title in Germany and Austria-Hungary.

1872, 1881. These Returns consist of copies of the various "Torrens" Statutes enacted by Colonial Legislatures in Australasia—British Columbia is also included—and Reports from local officials as to the working of the Torrens system. The general conclusion to be gathered from these Reports is that the system was considered to work satisfactorily.

1874. The Report of 1872 was forwarded by the Governor of South Australia to the Secretary for the Colonies, as likely to afford useful information "on the operation of a measure which has attracted so much attention as the system of Land Transfer established in this province." The Report and Evidence give an account of the working of the Torrens system in South Australia, and of the defects in the system which were considered to require attention; the nature of the difference between the ordinary title to land and the statutory title conferred by the Torrens system is clearly pointed out.¹⁷

¹⁷ Some extracts from the Report and Torrens Syst., 56-60. evidence are given in Hogg's Aust.

1878, 1879. These Reports contain some valuable suggestions on the subject of settlements and the position of a tenant for life of registered land in settlement; and also on the analogy between the system under the English 1875 Act and the Scottish and Australian systems of registration. Mr. Wolstenholme's suggestion was that the whole fee should be vested in the first tenant for life—inalienable except with the consent of other persons, as in the case of stock, and also as in the case of the Scottish fee, which is not cut up into life estate and remainder, the "liferent" being regarded rather as a burden on the inheritance.¹⁸

1887. The Land Transfer Bill of 1887 constitutes the first legislative attempt to introduce compulsory registration. The drafting differs a great deal from that of the 1897 Act, and the Bill contained clauses intended to effect other alterations in the law of land besides the devolution on death to the executor, etc. One noticeable clause was s. 9, which provided (in explanation of s. 49 of the 1875 Act) that "no legal estate or interest capable of registration" should "be conferred otherwise than by a disposition completed by registration." Another point of contrast between the Bill and the 1897 Act is that the Bill proposed to allow registration of a tenant for life as a limited and not a full owner. This distinction does not appear in the 1897 Act.

The Reports on the system of registration in Prussia and Hungary were furnished by the British consular officers in those countries. A more elaborate Report was made in 1896, referred to subsequently.

1888, 1889. These Bills are substantially the same Bill, the later containing amendments made by a select committee. It appears from the memorandum prefixed to each Bill that it was intended to re-enact the 1875 Act with the amendments contained in the Bill of 1887, and the memorandum proceeds: "In re-enacting the Act of 1875 it has been found necessary to recast both the form and substance of the Act to a much greater extent than is usual in measures of consolidation. This necessity is mainly due to the profound modifications of real property law, which since the passing of the Act of 1875 have been brought about by Lord Cairns' Acts of 1881 and 1882, and particularly to the changes which those Acts have created in the legal position of tenants for life and other limited owners. Since 1875 the tenant for life has been placed in an entirely different position by the Settled Land Act of 1882. . . . Since the passing of the Act of 1882 the practice of the Land Registry Office has been to register as proprietor the tenant for life

¹⁸ *Ante*, p. 18, note 28, and see *Lord Advocate v. Moray*, [1905] A. C. 531, 544, where it is said that an heir of entail, though he has the whole fee, is yet a limited owner.

as being a person having a power of sale under s. 68 of the Act of 1875, subject to restrictions in favour of the trustees. But this practice, though convenient, may perhaps be considered as involving a strain upon the language of the Act of 1875. . . . The Bills provided for the registration of two classes of owners, full owners and limited owners. The rights of these classes . . . agree in this essential particular, that a member of each class can convey the fee simple of freehold land to a purchaser. . . . What has been done, in fact, has been to revise and re-edit the Land Transfer Act with reference to the Conveyancing and Settled Land Acts of 1881 and 1882, and to rewrite it, so far as practicable, in the language of those Acts, with the additions of the Bill of 1887." Although this plan of consolidating the 1875 Act was eventually abandoned in favour of passing simply an amending Act, yet the provisions of the Bill of 1889 formed the basis of the Local Registration of Title (Ireland) Act, 1891,¹⁹ as may be seen by comparing the Bill and the Act together;²⁰ and the indebtedness of the Irish Act to the Bill of 1887 has been judicially recognized.²¹ S. 19 of the 1889 Bill—containing the "revised and re-edited" version of s. 49 of the 1875 Act as proposed to be amended by s. 9, above quoted, of the 1887 Bill—is, omitting one sentence, adopted as s. 44 of the Irish Act of 1891; the section runs (the words in italics appearing in the Bill, but not in the Act): "(1) Subject to the provisions of this Act, the registered owner of land shall alone be entitled to transfer or charge the land by registered disposition, and the registered owner of a charge shall alone be entitled to transfer the charge by registered disposition. (2) Nothing in this Act shall prevent a person from creating any right in or over any registered land or registered charge, but any right created or arising in relation to registered land after the first registration of the land shall not affect a registered transferee of the land or charge for valuable consideration, or the registered owner of a charge created on the land for valuable consideration, unless that right is either—(a) Registered as a burden affecting the land; or (b) One of the burdens to which, though not registered, all registered land is by this Act declared to be subject. (3) Any right in or over registered land *not appearing to the registering authority to be capable of being registered as affecting the land* may be protected by means of such cautions and inhibitions as are in this Act in that behalf mentioned." As already stated, the distinction between "limited" and "full" owners—*i.e.* tenants for life of settled land, and ordinary owners in

¹⁹ 54 & 55 Vict. c. 66.

²⁰ For instance, ss. 28, 30, 35, 36, 44, 45 of the Irish Act correspond very closely with ss. 5, 7, 11, 12, 19, 20, of the Bill of

1889.

²¹ *In re Keogh and Kettle*, [1896] 1 I. R. at 291.

fee—in the Irish Act and the Bills of 1887–1889, does not appear in the 1897 Act.

1895. This Report (though consisting only of the evidence taken) is valuable as containing the views of the Lord Chancellor and eminent conveyancers on the system introduced by the 1875 Act, and analogous systems of registration of title. Notwithstanding the variety of points discussed in this and preceding inquiries, no suggestion appears to have been made to the effect that the 1875 Act, or any of the amending Bills, was intended to confer, or could be construed so as to confer, anything but actual ownership on registered proprietors, an ownership which was to be as efficacious for all purposes as the old legal estate and not merely a statutory “power;” neither is there any suggestion to the effect that unregistered interests could stand on any higher plane of validity than merely equitable rights—rights which were “equitable” in the former sense of “personal” as distinguished from *jura in re* or rights inhering in the land itself. With respect to the Bill of 1895, which was before the committee, it may be mentioned that it contained provisions for making the tenant for life “limited proprietor,” which, as already stated, do not appear in the 1897 Act.

1896. This Report, and the Reports of 1887, constitute a distinct recognition by the authorities responsible for introducing the Land Transfer Bills into Parliament, of the fact—which the Commissioners of 1830 and 1850 declined to recognize—that useful information and analogies for legislation on the subject of land law in England may be obtained from a consideration of foreign systems of law. The same course—of obtaining information from the Continent in view of novel land legislation—was adopted in 1869, when Reports were asked for and presented to Parliament, on the subject of land tenure throughout Europe in view of the Irish land legislation of 1870. It appears from the Report of 1896 that registration of title has been for many years in operation throughout Germany and Austria-Hungary, and that the system works extremely well in those countries.

The Land Transfer Act, 1897, is divided into four parts. Part I. is headed: “Establishment of a real representative;” it applies to all land—other than copyhold—registered and unregistered, and provides, in effect, that land which would otherwise, on the death of the owner, have passed direct to the heir or devisee, shall pass to the executor or administrator like a chattel real. Some special provisions are also made for adapting the new rule of law to registered land. So far as regards registered land, the alteration thus effected in the law of succession on death is an extension of the principle of appointing a “real representative” already adopted

by ss. 41 and 42 of the 1875 Act, the rule laid down in s. 42 for succession to leasehold land and to charges being made to include freehold land.

Part II. consists of "Amendments of the Land Transfer Act, 1875." These amendments relate to: (1) Settled land; (2) Indemnity for loss through wrongful registration; (3) Land and charge certificates; (4) The effect of transfers and charges; (5) Preparation of instruments by unqualified persons; (6) Repeal of the Pretenced Titles Act; (7) Acquisition of title by long possession; (8) Succession and estate duty; (9) Undivided interests, number of co-proprietors allowable, and description of parcels; (10) Church benefices; (11) Title to be shown by a vendor-proprietor; (12) Withdrawal of land from register; (13) Small Holdings Act, 1892; (14) Repeals and "minor amendments" set out in sched. 1.

1. By s. 6 the provisions of the Settled Land Acts are adapted to the case of registered land, or land about to be registered, being in settlement. This is done by allowing either the tenant for life, trustees with power of sale, or persons with power of appointing the fee, to be registered as proprietor or proprietors of the land, and entering inhibitions or restrictions on the register in order to protect other persons who are beneficially interested. The principle of the 1875 Act, which makes a beneficial power of disposition over the land sufficient to support an application to be registered as proprietor of the land (ss. 5, 11), is extended so as to enable the holder of a fiduciary power of disposition to be a registered proprietor, with the necessary corollary of restraints on ownership (ss. 53-59), and the appointment of a proper person as successor when necessary (s. 41); a suggestion made in the Reports of 1850 and 1857,²² with respect to filing a settlement "in the registry for reference," is also adopted. A tenant for life, and any person having the powers of a tenant for life under the Settled Land Acts, may also be regarded as a "person having a power of selling land" within the terms of s. 68 of the 1875 Act (*ante*, p. 22). There is nothing in these enactments to indicate that any less estate than a statutory fee simple is conferred upon the tenant for life of freehold land who becomes the registered proprietor of the land, and it seems to have been the intention of the framers of the measure that the tenant for life should have a fee simple (*ante*, p. 31). It may be pointed out that this principle, of making the tenant for life of settled land a sort of protector of the settlement, had already been adopted in the case of land taken under the Lands Clauses Consolidation Act, 1845.²³

2. S. 7 supplies an omission in the 1875 Act, which made no

²² Report of 1850, p. 31; Report of 1857, p. 38.

²³ 8 & 9 Vict. c. 18, s. 7; *Ex parte Staples* (1852), 1 D. M. & G. 294.

provision for a loss caused through an indefeasible title being conferred on the wrong person. Some provision for indemnity had become the more necessary in consequence of the compulsory element introduced in 1897, and it had been suggested in 1830 (*ante*, p. 4) that the Government should be made responsible for the due discharge of the duties of the registry officers. Accordingly, it is now provided that where the register is rectified, or where it cannot be rectified notwithstanding that a mistake in registration has been made, persons incurring loss are, under proper circumstances, to be indemnified.

3. S. 8 makes provision for the land certificate being, in effect, a duplicate of the register, by enacting that all entries on the register must also be made on the certificate, which is to be produced for that purpose whenever any dealing is to be effected with the interest evidenced by it. The effect of the certificate being deposited by the registered proprietor as security by way of equitable mortgage is also defined, and such a deposit is made equivalent to a deposit of title-deeds of unregistered land by a beneficial owner in fee.

4. By s. 9 enactments in the Conveyancing Act, 1881, relating to the execution of conveyances and the powers of mortgagees, are incorporated in the Land Transfer Acts, and made applicable to instruments and transactions concerned with registered land. Annuities and mortgages to building societies are included among the transactions which may be effected by statutory charge or special form of mortgage. Provision is also made for transactions by a person who is not yet, but who has a right to be, registered as proprietor.

5. S. 10 imposes penalties on unqualified persons—*i.e.* other than regular legal practitioners—who prepare statutory instruments, etc., relating to registered land for remuneration. The enactment seems intended to dispose of any question whether s. 44 of the Stamp Act, 1891, which imposes similar penalties in respect of legal instruments in general, would apply to statutory instruments under the Land Transfer Acts; this policy of placing registered land, as far as possible, on the footing of ordinary land, is adopted in the enactments, already noticed, which adapt and incorporate parts of the Settled Land Acts and Conveyancing Acts, so as to make the latter include registered land within their operation.

6. S. 11 repeals s. 2 of the Pretenced Titles Act (32 Hen. 8, c. 9), and the repeal is complete—*i.e.* not only so far as concerns registered land. So far as registered land is concerned, the repeal removes a possible conflict between the repealed section and the provisions of the Land Transfer Acts which confer statutory indefeasibility of title on a proprietor registered with absolute title,

and is in conformity with the scheme of the Land Transfer Acts in substituting registration for seisin.

7. S. 12 re-enacts the repealed section (s. 21) of the 1875 Act—which provided that a title by mere length of possession was not to be gained against the registered proprietor of land—with additions; the effect of the new section is to allow any person, who would under ordinary circumstances have gained such a title, to have the title of the registered proprietor removed from the register in his own favour, but subject to dealings for value already registered.

8. By s. 13 succession duty and estate duty are, in effect, removed from the list of matters not constituting incumbrances set out in s. 18 of the 1875 Act, and the land is no longer liable to these two burdens in the hands of a *bonâ fide* purchaser unless they are entered on the register.

9. By s. 14 the limitation contained in the 1875 Act as to the number of persons who may be registered as “co-proprietors,” and the prohibition against the registration of undivided shares in land, are repealed. The method of describing the parcels in registered instruments is also made more elastic, and descriptions are to be based on the ordnance map.

10. S. 15 relates to what is often called “the parson’s freehold,” and contains provisions for restricting the alienation of land by a rector, etc., who holds as a corporation sole. The case of a corporation sole holding land is not provided for in the 1875 Act; the language of the present section, which speaks of “the incumbent . . . and his successors” being “registered proprietors,” is somewhat inexact.

11. S. 16, in providing for the evidence of title which a purchaser is entitled to require of his vendor, carries out and explains the leading principle enunciated in the Report of 1857—that “the register will be a substitute for the documentary or parchment title” (*ante*, p. 9), except as to interests “excluded from the effect of registration.”

12. S. 17 provides that, except where registration is compulsory, land may be removed from the register. In view of the fact that the 1897 Act is intended to make compulsory registration the rule, the enactment is not very important.

13. S. 19 provides that purchasers of small holdings from a county council are to be registered with absolute title.

14. S. 18 enacts that the 1875 Act is to be amended “in regard to minor details” as set forth in the 1st Schedule. These “details” include repeals, verbal amendments, and further amendments intended to bring the law relating to registered land as far as may be into harmony with the law relating to ordinary land; as, for

instance, amendments relating to the effect of registered charges, the position of married women since the Married Women's Property Act, 1882, and the relation between registered leasehold land and the unregistered freehold reversion.

Part III., headed "Compulsory Registration and Insurance Fund," consists of two sections—ss. 20 and 21. S. 20 provides for Orders in Council being made declaring registration of title to be compulsory on sale in a named district after a specified day. The machinery for making registration "compulsory" is the enactment that, after registration is thus made compulsory, "a person shall not, under any conveyance on sale executed on or after the day so specified, acquire the legal estate in any freehold land in" the district "unless or until he is registered as proprietor of the land"; "conveyance on sale" is defined as "an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act." Under the 1875 Act (s. 7) possession of the "legal" fee, or fee simple "at law," is not essential to a right to apply for first registration; either the equitable fee simple, or a power over the fee simple, is sufficient. The scheme of compulsion seems to consist in this: a formal conveyance in fee from the vendor to the purchaser, which would—but for the "compulsory" enactment—vest the legal fee simple in the purchaser, is not to have that effect until the purchaser becomes the registered proprietor of the land; if the purchaser chooses to apply for registration on the strength of an equitable fee, or a power, he can do so, and—when once he is the registered proprietor—has no occasion for having what is ordinarily known as the "legal estate." The question of the relation between the old technical "legal estate" and the registered proprietorship is one of the greatest practical difficulties of the system, and will be fully dealt with later on. The construction which, it is submitted, best reconciles the language of the enactments with the intentions of the legislature as shown in the title and preamble of the 1875 Act, and the four Reports which led up to that Act, and confirmed by the parliamentary papers from 1872 to 1896 referred to in connexion with the 1897 Act (*ante*, p. 31), is that the fee simple conferred by the first registration of land is a new parliamentary or statutory fee simple, and that on its creation the old technical or "legal" fee simple ceases to exist for practical purposes, *i.e.* ceases to confer that right of possession of the land against the world which a court of common law would formerly have enforced;²⁴ in other words, a new "legal estate" or new kind of legal ownership is created.

²⁴ See note 9, *ante*, p. 23.

S. 21 establishes an "insurance fund," but merely as a matter of book-keeping; the State incurs what is substantially unlimited liability for losses chargeable on the insurance fund.

Of Part IV.—"Miscellaneous"—only ss. 22 and 24 need be noticed here. S. 22 confers authority to make rules for carrying the provisions of the Act into effect, and in particular for the purpose of adapting to leasehold land the procedure prescribed for freehold land, and for adapting, to incumbrances outstanding when first registration takes place, the procedure relating to statutory registered charges. Rules as thus authorized were made in 1898, and these and subsequent Rules are now superseded by the present Rules of 1903.

S. 24 contains definitions of "land" and "personal representative."

The Land Transfer Rules, 1903, are dated December 18, 1903, and came into force on January 1, 1904. The Forms prescribed for use in transactions with registered land are contained in a schedule to the Rules. As already pointed out (*ante*, p. 27), the Rules and Forms are more numerous and less simple than those made and prescribed in 1875 and 1889. The difference between the Rules of 1875 and the Rules of 1903 answers broadly to the difference between the Act of 1875 and the Act of 1897, and may be said to consist in an increase of particularity induced by the necessity of providing for special circumstances, as far as possible, in accordance with what would be the provisions of the general law under similar circumstances when arising in connexion with unregistered land, having regard also to legislation passed since 1875. Apart from the mere increase of special circumstances provided for, the chief points of difference between the present Rules and those of 1875 are that the form in which the register is to be kept is laid down more precisely, and that both the method of effecting changes on the register, and the forms of instruments to be used in transactions resulting in changes on the register, are more accurately prescribed. The scheme of 1857 contemplated that the register should consist of "a succession of simple transfers," and that transfer should be effected by registration of a short deed in an authorized form (*ante*, p. 11). The 1875 Act enacts this principle (ss. 22, 29), but in the broadest way possible, and without going into any details at all, merely directing that "transfer" and "charge" are to be "completed" by the entry of the transferee or mortgagee on the register as proprietors of the land or charge. "Transfer" and "charge" are, in the 1875 Act, never used in the sense of "instrument of transfer," etc., but always mean the transaction—including in the case of a charge, the rights conferred by the transaction—or the effecting of

the transaction, according as the word used is a noun or verb. So "registered disposition" and "registered dealing" are used without any reference to a specific instrument. The expression, "instrument of transfer," etc., does not occur in the 1875 Act; it appears for the first time in the Rules and Forms of 1875, and is used, with a few exceptions,²⁵ throughout the 1897 Act and the 1903 Rules in such a way as to draw a distinction between "transfer" and "instrument of transfer." The forms of instrument of transfer prescribed by the Rules of 1875 were not under seal, but required a special attestation and verification. The forms of 1903 are mostly under seal, and when under seal must be attested as deeds are usually attested.²⁶ The distinction, however, between a statutory "instrument" and an ordinary deed of conveyance is recognized throughout the Rules and Forms, as, for instance, in Form 38.

The principle of simplicity and non-technicality in form is illustrated by the absence from the statutory instruments of words of limitation, such as "heirs," and the absence of anything closely analogous to a conveyance operating under the Statute of Uses. An example of the latter kind is found in Form 43—"Instrument of Partition"—where A., B., and C. purport to transfer three parcels of land to A., B., and C., "separately or respectively."²⁷ On the other hand, the word "uses" appears to be employed unnecessarily in Form 22, and the "specially prescribed form" authorized by s. 6 (3) of the 1897 Act would have had the prescribed effect if "uses" had been omitted. An instance of a word of limitation being employed (unnecessarily, it is submitted) occurs in Form 36, where "successors" is added to the corporate name of a corporation sole; this is, however, evidently modelled on s. 15 (1) of the 1897 Act (*ante*, p. 34). The Forms do not contemplate the introduction of covenants for title, these being unnecessary where the purchaser acquires an absolute title by registration. Rule 99, however, permits the introduction of the implied covenants under the Conveyancing Act, 1881; this would appear to be necessary only in the case of a purchaser taking a transfer of land registered with a qualified or possessory title.

Rules 130, 164, and 167 may be specially mentioned as raising possible difficulties. Rule 130 requires evidence to be provided that a "registered proprietor has power to transfer in consideration of a rent." This implies a construction of the Acts which is at least doubtful, *i.e.* that a registered proprietor cannot ordinarily transfer

²⁵ For instance, 1903, rr. 103, 185.

²⁶ The introduction of "deeds" into the prescribed forms seems to have originated in a suggestion made to the Select Committee, who sat on the Land Transfer

Bill of 1895: appendix to Report, p. 262.

²⁷ This case does not appear to be covered by the enactment in s. 50 of the Conveyancing Act, 1881.

"in consideration of a rent." Rule 164, in requiring a mortgagee, who has obtained a foreclosure order, to produce the land certificate, appears to contravene the principle laid down in s. 8 (4) of the 1897 Act, by which a mortgagee may realize on his security without reference to the whereabouts of the land certificate. Rule 167 purports to give to the discharge of a building society's mortgage over registered land the same effect as in the case of unregistered land; in the case of unregistered land the discharge usually takes effect by way of assurance and without entry on a register, and it can hardly have been intended that this should be the effect of such a discharge in the case of registered land.

The general scheme of the Acts and Rules may, as a whole, be described as one for the registration of persons as proprietors of interests in land, in lieu of registering the instruments—quâ operative assurances—by which changes in proprietorship and other transactions with the land are authorized and evidenced. This is the distinction in principle between systems of registration of title and systems of registration of assurances, though the distinction tends to become obliterated in practice by the prominence sometimes given, both in the English system and other systems of registration of title, to entry of the necessary instrument, rather than the person claiming under the instrument, on the register; an illustration is afforded in the extract to be now given from a well-known judgment. The following passage from the judgment of the Privy Council in *Gibbs v. Messer*,²⁸ referring to one of the repealed Australian Torrens Statutes—the Victorian Transfer of Land Statute of 1866—seems to describe accurately the general scheme of the English Acts and Rules: "The main object of the Act, and the legislative scheme for the attainment of that object, appear . . . to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that every one who purchases, in bonâ fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title."

Although the Acts do not purport to make changes in the substantive law of property, and registration is often spoken of as merely a matter of procedure, yet a system of registration of title necessarily involves almost a revolution in the methods of conveyancing, and a

²⁸ [1891] A. C., at 254. The judgment was delivered by Lord Watson; the word "author," and the word "deed," as applied

to an instrument not under seal, belong to Scottish rather than English law.

great change in the juridical theory of property in land.²⁹ Moreover, without any direct enactment on the subject, the Acts certainly appear to give legislative sanction to a conception of property in land which is not consistent with the feudal principles on which the land law of England rests, as, for instance, by ignoring any necessity for seisin, and by making the only practical difference between a fee simple estate and an estate for years to consist in the length of time for which the land is owned. All the essential features of the system fall under one or more of the following four heads: (1) The nature of registered land, regarded as a subject of property; (2) The warranty of title which entry on the register gives to the person entered as proprietor of an estate in the land; (3) The nature of rights of property in registered land; (4) The method of effecting transactions with, and changes in the ownership of, registered land.

1. There appear to be only two classes of land—using the word in its ordinary physical sense—in England and Wales which cannot be placed on the register, namely, land held by copyhold tenure, or tenure analogous to copyhold; and land vested in the Crown in its prerogative right, not granted to any subject or private person, and not claimed by a private person. All other land may, and in certain districts must, be placed on the register. Registered land may be said to consist of two divisions, land held in perpetuity, and land held for a definite time measured either by years or lives. The subordinate interests in land which can be placed for the first time on the register may consist of “incorporeal hereditaments,” or of portions of the land such as mines and minerals, or of a rent. Land held in perpetuity or in fee simple is usually called, in the Acts and Rules, “freehold land;” land held for a definite time, “leasehold land.” The technical difference between an estate of freehold and an estate for years, and also between the estate of a subject and the allodial dominium or property of the Crown, are neglected rather than abrogated. Though the terminology of the Acts and Rules is strictly applicable to such ownership as chattels only, and not land, are capable of by the principles of English law, yet the underlying principles of the feudal law are not destroyed or uprooted; the superstructure erected on these principles may be said, however, to have advanced a further stage in the direction of preparation

²⁹ See Pollock's *First Book of Jurisprudence* (2nd ed.), pp. 182, 188; it is there said: “In a system where ownership is capable of direct proof and official confirmation, as by a registry of titles to land, the importance of possession and prescription tends to diminish, and can even become a vanishing quantity.” And see the remarks of Mr. Hayes in his evidence before the Royal Commission of 1830,

Appendix, p. 367, as to the possible effect of a general registry, quoted in Hogg's *Aust. Torrens Syst.*, 15. In Victoria, it has been said that the effect of the Bill introducing the Torrens System “revolutionizes the whole real property law of the colony:” opinion of Crown law officer in 1862, quoted in Hogg's *Aust. Torrens Syst.*, 44.

for such destruction, and for the substitution of more logical foundations.

2. Land, and interests in land, may be registered with any one of three degrees of title, *i.e.* absolute, qualified, or possessory, and machinery is provided for official investigation of the title of owners who place their land on the register. An absolute title enables the owner to hold against the world, that is, of course, within the limits of his rights of ownership as stated on the register and conferred by the Acts. Under a qualified title the owner holds against the world, except in respect of certain named rights, complete or contingent, vested in other persons. Under a possessory title the owner holds against the world only in respect of claims arising after the date of the land being placed on the register; claims in respect of the land which exist at the date of registration are altogether outside the warranty afforded by the registration. The warranty—absolute or limited, as the case may be—thus given to the owner of registered land is made effective by conferring a right to money compensation on any person who suffers loss through the operation of the warranty of title, in case of any mistake occurring in entries on the register. The warranty of title extends not only to the ownership of the registered land held by the first registered proprietor, but also to every subsequent ownership and incumbrance appearing by the register to be vested in any person, according to the terms of the registered entries and the degree of the title. Since the word “title” is here used with regard to its degree in the scale of absolute, qualified, and possessory, it would perhaps be better to use the expression “warranty of proprietorship,” which is really what is meant by “warranty of title,” but the latter is a phrase well understood. The word “title” is, in fact, used throughout the Acts and Rules in three different senses.

3. Rights of property in registered land are, for all ordinary purposes of enjoyment and alienation, the same as rights of property in unregistered land; they are, however, evidenced, secured to their owners, and vested in new owners, by methods and forms which differ from those applicable to unregistered land. The technical distinction in form between “legal” and “equitable” ownership is abrogated, and entry on the register takes the place, not only of seisin, but of any right which amounts substantially to a right to enjoy the ordinary incidents of ownership; whilst equitable ownership not evidenced by entry on the register is not recognized as true ownership, but rather as consisting of rights of a personal nature enforceable against the owner on the register. A close analogy to a register of this description, which admits of only one form of ownership, and leaves “equitable” ownership to be

represented by restrictions on alienation, is afforded by the registers of the public funds kept by the Bank of England, companies' share registers, registers of ships, the manor rolls of copyhold tenures, and the registers under the Australian Torrens system; both in Scotland and in South Africa, where ownership is not divided into "legal" and "equitable,"³⁰ the registers also afford analogies to the register under the new English system. The equitable or personal rights above referred to must, in order to be fully secured, have the fact of their existence evidenced by some entry on the register, and when thus appearing on the face of the register they are in the nature of incumbrances on the ownership, and so are protected by the inability of the registered owner to deal with the land as unincumbered. In addition to rights thus protected, and constituting limitations on the rights of property of the registered proprietor, certain classes of rights, as, for instance, easements, rights of occupation, rights incident to tenure, and public charges, are excepted from the conclusive effect given to entry on the register as proprietor. Other rights may also be excepted in the case of land registered with qualified or possessory title as already mentioned; but, whether such rights be of the nature of ownership or encumbrance, they may, on the initiation of the persons entitled to them, be duly entered on the register. With these exceptions, rights of property in registered land are deemed to be vested in accordance with the statements on the register concerning them, and require no further proof.

4. The features of the system referred to under the foregoing three heads are all subsidiary to the provisions for facilitating transactions with land and changes in ownership. These consist of the following: (i.) Complete alienation, or change of ownership, of land or an interest in land; (ii.) Creation of interests merely for securing payment of money; (iii.) Settlement; (iv.) Creation of interests of the nature of ownership, or rights in the land itself, such as leases, life-estates, easements, etc. It must be borne in mind that the land may be either "freehold" or "leasehold," and that the effect of every transaction or change of ownership is liable to be modified by the land being registered with only a "qualified" or a "possessory" title.

(i.) The principle of the method of effecting changes of ownership is that the property does not pass completely by the mere execution of an instrument, but only on the purchaser, etc., being entered on the register as proprietor in place of his predecessor. In the case of ordinary transactions *inter vivos* an instrument in statutory form, usually under seal, must be executed and attested,

³⁰ See Erskine's Principles (20th ed.), 523, where "legal estate" and "equitable estate" are used, not as terms of art, but

by way of analogy to describe the Scottish "trust."

and its production at the registry is usually sufficient authority for the entry of the new proprietor. In cases where the name of the proprietor who appears on the register has ceased to be there rightfully, the change of proprietorship is made on the register upon production of sufficient evidence of the proposed new proprietor's right to be entered. In each case, the person who claims under a duly executed statutory instrument, or otherwise, by reason of the death, bankruptcy, etc., of the registered proprietor, has, before his entry on the register, merely a right to be registered, and not true ownership. This method of effecting changes in ownership is closely analogous in principle to the methods employed in transactions with shares in companies, ships, and copyhold land, in English law; it is also closely analogous to the methods in use with respect to land in Australia under the Torrens system, and with respect to land in Scotland³¹ and in South Africa.

(ii.) The method of effecting mortgages, etc., is entirely different from the ordinary method of mortgaging unregistered land. A statutory instrument of "charge" is executed, and the mortgagee, when entered on the register as the proprietor of the charge, has conferred on him statutory powers for realizing his security by sale, etc.; the mortgagor remains the registered proprietor of the land. The equitable rule, which regards the mortgagor as owner, notwithstanding his conveyance of the legal estate to the mortgagee, is thus followed. The mortgagee under the new system thus has only an incumbrance on, but no estate in, the land; this is the case under the Australian system, and also in Scotland and South Africa.³²

(iii.) A settlement of registered land may be effected in two ways: The land may be vested, by ordinary instrument of transfer duly completed by registration, in the persons who are to be the trustees, the beneficiaries being protected by appropriate entries on the register; in this case the settlement will usually take the form of a personal settlement, the trustees holding the land on trust for sale, and the beneficiaries taking what will be analogous to equitable estates. By the alternative method, the land may be made the subject of a settlement by deed in strict settlement, and either vested in trustees as before, or vested, by a special form of instrument completed by registration, in the tenant for life, who will be entered on the register as proprietor—thus taking the fee simple, in the case of freehold land—but will be restricted from dealing improperly with the land by appropriate entries on the register as in the case of trustees.

³¹ See Bell's Principles (8th ed.), para. 779A, as to a "personal right under an unfeudalized conveyance;" *Lord Advocate*

v. Moray, [1905] A. C., at 548.

³² Bell's Principles (8th ed.), para. 900; *Josef v. Muller*, [1903] A. C., 190.

(iv.) The Acts do not permit of the registration of any person as proprietor of less than the whole property in the land—though the “land” may be only leasehold, or an undivided interest, etc. The land on the register can only be transferred or charged, if it be desired that the person in whose favour the transaction is made is to have the full statutory benefit of registered ownership or incumbrance. Partial estates, such as leases for years, estates for life, etc., can only be created off the register, and being off the register will be in the nature of incumbrances rather than estates.⁸³ An analogy is afforded by the Scottish life-rent, which partakes of the nature both of an estate and of an incumbrance. Provision is made for registering “notice” of leases, and for entering on the register cautions, inhibitions, and restrictions, the effect of which will be to prevent the registered proprietor from dealing in an unauthorized manner with the land. Beyond securing that the land shall remain in statu, so as to answer the various claims upon it, the Acts do not confer any special efficacy on the deeds by which the unregistered interests are created; nor is there any provision for enabling one unregistered interest to gain priority by priority in entering a caution, etc.

⁸³ This statement is at variance with the construction placed upon s. 49 of the Land Transfer Act, 1875, in *Capital and*

Counties Bank v. Rhodes, [1903] 1 Ch. 631. The subject is dealt with fully later on.

CHAPTER II.

PLACING LAND ON THE REGISTER.

SEC. 1.—The meaning of first registration.

SEC. 2.—What land may be registered, and by what persons.

SEC. 3.—Compulsory registration.

SEC. 4.—Procedure on first registration.

SECTION 1.—THE MEANING OF FIRST REGISTRATION.

THERE are six different expressions—with modifications of each—used in the Acts and Rules to denote the operation of placing land on the register for the first time:—

1. Registration of the land.¹
2. Registration of the proprietor of the land.²
3. Registration of the title to the land.³
4. Entry of the land on the register.⁴
5. Entry of the proprietor on the register.⁵
6. First registration.⁶

These expressions, however, all seem to mean exactly the same thing. Registration of the land is effected by the name of the proprietor being placed on the register, and the land from that time is said to be “registered.” Registration of the “title” to land is a phrase often used as the equivalent of registration of the proprietorship as distinguished from incumbrance; in the provisions relating to compulsory registration it is the “title,” not the “land,” the registration of which is said to be compulsory. “First registration” may refer either to registration of the land or registration of the proprietor, the person originally registered being called “first proprietor;” the phrase is a convenient one, and will, as far as possible, be used to denote the placing of land on the register for the first time.

¹ Instances: 1875, ss. 19, 82, 112, 127; 1897, ss. 6, 8 (5), 13, 14; 1903, rr. 19, 36, 50, 62, 64, 71–74, 78, 175. The expression “registered land” occurs *passim*.

² Instances: 1875, ss. 5–8, 11, 13, 18 (7) (d), 68, 72, 82, 83; 1897, ss. 19, 20, 22 (6); 1903, rr. 18, 21, 54, 55, 69, 70, 75, 77, 83, 95, 96, ff. 1, 3.

³ Instances: 1875, ss. 9, 83, 127 (as

amended); 1897, ss. 17 (1), 20, 22 (4); 1903, rr. 5, 9, 11, 12, 48, 49, 218, 280.

⁴ Instances: 1875, heading to Part I.; 1903, r. 88.

⁵ Instance: 1875, s. 10.

⁶ Instances: 1875, ss. 7, 18 (as amended), 19; 1897, ss. 8 (5), 22 (6) (h); 1903, heading to Part II., rr. 19, 175, 216, 252.

"Placing on the register" may be said to mean that the property—the word "land" is purposely avoided—so placed becomes subject to the provisions of the Land Transfer Acts and Rules, so that rights in it, and transactions with it, must for the future be governed by the code of law constituted by the Acts and Rules, so far as this takes the place of the ordinary law. There is, however, an ambiguity in the meaning of the word "land" which makes it necessary to ascertain more exactly the meaning of "first registration." The question is: What is meant by placing "land" on the register? Under the definition in the 1897 Act,⁷ "land" includes "all hereditaments, corporeal and incorporeal," and among hereditaments which may be placed on the register are expressly included rent-charges and advowsons.⁸ This definition, however, does not touch the present question. The Acts and Rules purport to make the "registration" of the land permanent; the "land" can only be removed from the register by the proprietor with the consent of all persons interested in it, and only where the land is situate in a non-compulsory district; in a district where registration is compulsory on sale, land cannot be removed from the register at all.⁹ Does land, then, in compulsory districts remain on the register for all time, and in non-compulsory districts until removed by the proprietor? The ambiguity in the meaning of "land" is responsible for this question being raised; the answer to the question, and the meaning of "land," may be sought at the same time.

It will be necessary to glance at first principles. Ownership or proprietorship of land in England—other than land vested in the Crown by its prerogative title—may be considered to be divided into lengths as regards duration in time,¹⁰ and owners may be regarded as either "limited" or "full" owners,¹¹ according as they are owners for a definite time or an indefinite time extending—potentially—to perpetuity. A proprietor is ordinarily said, indifferently, to own his land or to have an estate in it, and this alternative terminology is found throughout the Land Transfer Acts and Rules. Part I. (ss. 5-20) of the 1875 Act affords many illustrations, as, for instance, ss. 5-7, where "freehold land" is synonymous with "fee simple," and the registration of a person as "proprietor of freehold land" vests in him an "estate in fee simple in such land." So

⁷ 1897, s. 24. This must, of course, be taken subject to s. 2 of the 1875 Act, which excludes copyhold land from the provisions of the Acts and Rules.

⁸ 1875, s. 82; 1903, rr. 71-73.

⁹ 1897, s. 17.

¹⁰ See Jenks' *Modern Land Law*, 186; 2 Pollock and Maitland's *History of English Law*, 10.

¹¹ The expressions "limited owner"

and "full owner" occur in the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), s. 28, and although the expression "limited owner" is there—as well as in the Settled Land Acts—applied to a tenant for life or tenant in tail, there seems no reason why the owner of an estate for years should not equally be called a "limited owner."

leasehold land, and the proprietor's estate in the land, are spoken of indifferently; an instance occurs in s. 34 of the 1875 Act. The use of "first registration of land," and "registration of first proprietor of the land," as synonyms, is only another instance of the identity in meaning of "land" and "estate in land;" the registration of the proprietor is the registration of his estate, and the registration of either proprietor or estate is the registration of the land. Since registration of land, and registration of a first proprietor, are synonymous and interchangeable expressions, it should follow logically that land cannot be registered, or cannot remain on the register, if there be no person in existence who can also be registered as proprietor. This is actually the case with respect to leasehold land on the determination of the lease under which it was held, and on the faith of which it was placed on the register;¹² there being no longer any one who can be registered as proprietor of the leasehold land, the registration of the land comes to an end. It is, then, not the land as a physical thing which is placed permanently on the register, but only the land as an estate or right; the owner's estate in the land may be said to be permanently on the register, for it remains there independently of the personality of any particular owner, and only ceases to be on the register when it ceases to exist as an estate. This is further illustrated by the relation between freehold and leasehold land; the freehold land—physically the same land—is not on the register merely because the leasehold land is there,¹³ and conversely, the freehold land may be on the register, whilst the term carved out of it exists only as an incumbrance, and not as registered "leasehold land."¹⁴ By analogy, registered freehold land should cease to be on the register when the estate of the first proprietor comes to an end—i.e. ceases to exist, not merely is divested from him or one of his successors in title. Practically, this would only happen in the event of escheat taking place, either in favour of the Crown or some other feudal superior. The rights of the Crown to escheat and forfeiture are expressly preserved by the 1875 Act, and the rights of the lord in some enfranchised copyhold land are also expressly preserved by the Copyhold Act, 1894.¹⁵

In the absence of authority, it is impossible to say confidently that the analogy between leasehold and freehold land in this respect would be followed with respect to freehold land escheating;

¹² 1875, s. 20; 1903, rr. 218–222. And see the Australian case of *Sander v. Twigg* (1887), 13 V. L. R. at 774, 787, quoted in *Hogg's Aust. Torrens Syst.*, 716.

¹³ 1875, s. 127, as amended by 1897, sched. 1. The expression there used is "unregistered reversion on a registered

leasehold title," which would include both freehold and leasehold land.

¹⁴ 1875, ss. 50, 51; 1903, rr. 218–222.

¹⁵ 1875, ss. 2 (as amended by 1897, sched. 1), 18 (1), 105; 1903, r. 87; Copyhold Act, 1894, s. 21 (1) (b).

but the analogy is one that might reasonably be followed, and its extension to freehold land would be in accordance with the principle which seems to underlie first registration, *i.e.* that the land and the proprietor are only registered for the period of time—definite or indefinite—during which the ownership or proprietorship of the land, as first registered, exists. With respect to title acquired by long possession and rectification of the register,¹⁶ the proprietorship of the new owner will be the proprietorship of the owner who has been removed from the register, notwithstanding that under the general law the fee simple of an owner barred by Limitation Acts is not actually transferred to the person entitled by long possession.¹⁷ This has been held to be so under the Australian system,¹⁸ and the decision would apply to the English Acts.

The above considerations suggest that by “land”—other than Crown land, as already mentioned—in the Acts and Rules is not meant land in its purely physical sense apart from any ownership, but land as a subject of property, owned for a period of time which may be definite or indefinite. The same considerations suggest that land, in the latter sense, does remain permanently on the register—*i.e.* so long as the estate or ownership of the first proprietor, irrespective of the personality of any particular proprietor for the time being, continues to exist; but, in the case of land in a non-compulsory district, the proprietor for the time being may remove the land from the register. Land, in its purely physical sense, only remains on the register whilst the ownership in respect of which it was first registered exists, and no longer.

The meaning of “land,” and the question of its being permanently or otherwise on the register when once placed there, has been dealt with so far on the footing that only land of subjects of the Crown, or private persons, is referred to. Land vested in the Crown is also mentioned in the Acts,¹⁹ but without any reference to the technical difference in the nature of the Crown’s title to land; the title of the Crown is, in fact, treated as though it were of the same nature as the title of subjects or private persons, and the only right of the Crown which still has any practical existence—the right to escheat—is expressly preserved in much the same language as rights to escheat in copyhold lands, and other rights originating in tenure, are preserved.²⁰ Since land vested in the

¹⁶ 1875, ss. 95, 96; 1897, ss. 7, 12.

¹⁷ *In re Nisbet and Potts’ Cont.*, [1905] 1 Ch. at 399.

¹⁸ *In re Allen* (1896), 22 V. L. R. 24. See Hogg’s Aust. Torrens Syst., 518, 716; Victorian Transfer of Land Act, 1904, s. 10.

¹⁹ 1875, ss. 7, 13, 30, 35, 65, 66; 1897, s. 7 (7).

²⁰ See references in note 15, *supra*. The circumstances of the colonies afford better means of comparing the prerogative title of the Crown with the title of subjects, and several cases as to this may be

Crown is mentioned in the Acts, to this extent it must be said that the word "land" is sometimes used in its purely physical sense of property absolutely or allodially owned. No mention, however, is made of the Crown as registered proprietor. If land vested in the Crown were once placed on the register, it would seem to follow from what has already been said that no question of the land ceasing to be on the register could arise, since the proprietorship of the Crown technically never does come to an end. The Real Property Commissioners, when in their Third Report of 1832 they recommended the retention of the feudal system of tenure as the foundation of our land law (*ante*, p. 26), had already declined to recommend any system of registration of title. Possibly at the present day the existence of a system of registration of title might be considered an argument in favour of allodial ownership in theory, as well as in practice. The existence in one large division of the British dominions beyond the seas, as well as in many smaller colonies, of bodies of Statutes in the English language, and land registries administered by English-speaking officials, having as their basic conception of property in land allodial ownership and not feudal tenure—for this is actually the case in South Africa, Ceylon, British Guiana, etc.—certainly furnishes an excellent object lesson in favour of a reversal of the recommendation, made by the Real Property Commissioners in their Third Report, to retain the theory of feudal tenure in England.

SECTION 2.—WHAT LAND MAY BE REGISTERED, AND BY WHAT PERSONS.

The 1875 Act drew a distinction between "land" and "incorporeal hereditaments," and also between "land" and "mines and minerals," etc.¹ The 1897 Act defines "land" as including "all hereditaments, corporeal and incorporeal," and thus introduces some confusion by making unnecessary the special provisions of the 1875 Act with respect to incorporeal hereditaments and mines, etc.; "mines" are also included, unless these have been severed before the registration of the land or January 1, 1898, in "land."² The result of the wide definition of "land" is that most of the provisions of the 1903 Rules *primâ facie* apply to incorporeal hereditaments, and also to mines, etc., though special provisions are made with respect to both.³ The word "land," then, is used in the Acts and Rules in much the same way as it is ordinarily used apart from any

found in Hogg's Aust. Torrens Syst., 710, 717.

¹ 1875, ss. 2, 18, 82.

² 1875, ss. 7, 13, 18 (as amended by

1897, sched. 1), 30-33 (as amended), 35-38 (as amended); 1897, s. 24.

³ 1903, rr. 71-76, 134, 213, 214.

statutory definition : *i.e.* it generally means the land itself *a centro usque ad cœlum* ; it may mean the surface only, without the mines ; it may mean a "horizontal hereditament" as well as a "vertical" one ; it may mean an incorporeal hereditament ; and it may mean an undivided share in the land. The classes of "land" which may be registered correspond with these different meanings of the word.

Some practical difficulty will occasionally arise in determining whether, in a particular case, the doctrine of *a centro*, etc., applies so as to cause the mines to be included in the "land." It is presumed that *primâ facie* the ordinary rule will apply to registered land. Special provision is made in s. 18 (c) of the 1875 Act for registering the mines independently—whether severed or not, and this furnishes some argument for construing "land" to mean the surface without the mines ; but this is only consistent with sub-ss. 4 and 5 in their original shape, which make the mines in all cases interests independent of registration. The amendments made by the 1897 Act in these sub-sections, and in ss. 30-33, 35, and 38, seem to make it unnecessary for the mines to be registered separately where they are actually vested in the proprietor of the land.

Broadly speaking, all interests in land in England and Wales which amount to property, and not mere rights or incumbrances, may, with three exceptions, be registered. These exceptions are : (1) Land belonging to the Crown or the Duchies of Cornwall or Lancaster, or held in trust for the public service ; (2) land vested in trustees who have no power to alienate it ; (3) land of copyhold tenure.

1. The provision, in s. 2 of the 1875 Act, that only land, and interests in land, of freehold tenure may be registered, might perhaps be sufficient to exclude land vested in the Crown by its prerogative title, since the Crown has no "tenure" of its lands. But all lands substantially belonging to the Crown, the Duchy of Cornwall, the Duchy of Lancaster, or the State, appear to be placed on the same footing notwithstanding any technical difference in title, and to be excluded from the provisions of the Acts and Rules which enable lands to be registered upon the application of their owners. The Crown is expressly mentioned several times in the Acts, as, for instance, its rights (other than escheats, etc.) are bound by the statutory effect of registration.⁴ Nothing, however, is said as to applications for registration by the Crown, or in respect of public lands ; the word "application" in s. 65 of the 1875 Act may well refer to applications for inhibitions or restrictions under ss. 57 and 58, and the context in ss. 65 and 66, which appears to have reference to the case of Crown or public lands adjoining lands of

⁴ 1875, ss. 7, 13, 105.

private persons about to be registered, confirms this view. It is therefore submitted with some confidence that public lands, or lands belonging to the Crown or to the Duchies of Cornwall or Lancaster, cannot be placed on the register.

2. Land may be vested in trustees who have no power to dispose of it. To property of this kind the scheme of the Acts has no application. The foundation of the right to bring land on to the register is the power to alienate it, with or without any conditions such as other persons' consent, etc. Thus, land, in order to be registered, must be either the subject of beneficial ownership, or, if the subject of fiduciary ownership, must be capable of being validly alienated.⁵

3. Land of copyhold tenure, and interests therein, are distinctly—though not in so many words—excluded from registration. S. 2 of the 1875 Act shows that the intention is to exclude all land the title to which, on a sale, must be perfected by admission or an act of the lord of the manor, and some customary freeholds are for this purpose "copyhold." But if the land be in fact copyhold, though mixed indistinguishably with freehold, or if it be uncertain whether it is freehold or copyhold, it may be registered; the rights of persons entitled on the footing of the land being copyhold are not affected by the registration, though if registered as freehold with absolute or qualified title the title conferred by the registration holds good, and the true owner would receive indemnity.⁶

It is contemplated that the interest in the land which entitles application to be made for first registration shall be in the nature of ownership, as distinguished from incumbrance. Although provision is made for mortgagees, and other persons having powers of sale, being registered as first proprietors, this is only in virtue of their capacity to alienate the land absolutely; quâ mere incumbrancers they cannot place land on the register. Provision is, however, made for an incumbrancer, when once the land is on the register, to register an incumbrance created before the land itself was registered.⁷

The following five classes of land may be placed on the register : (1) Freehold land ; (2) leasehold land held for lives or for more than twenty-one years ; (3) portions of land below, including, or above, the surface, divided horizontally ; (4) undivided shares in land ; (5) incorporeal hereditaments.

1. The "freehold land" which may be registered is land owned—though not necessarily by the applicant—in fee simple, and on registration the first proprietor takes "an estate in fee simple."⁸ It appears to be contemplated that this fee simple shall be in possession

⁵ 1875, ss. 5, 11, 68; 1897, s. 6; 1903, sched. 1), 67; 1897, ss. 7 (1), 24; 1903, r. 87. r. 83.

⁶ 1875, ss. 2 (as amended by 1897,

⁷ 1897, s. 22 (6) (e); 1903, rr. 175–177.
⁸ 1875, ss. 7, 8, 9.

—*i.e.* not what is usually called an estate in remainder, and the incapacity for direct registration imposed on an estate for life or in tail seems to imply that an estate in remainder cannot, as such, be registered; but there seems to be no reason why a remainderman should not, with the consent—possibly without the consent—of a tenant for life, become first proprietor and have the life interest notified on the register as an incumbrance.⁹ The existence of a term of years of any length appears to be no bar to the registration of the freehold land, for the lease can be noted on the register as an incumbrance.¹⁰ A tenant for life, or tenant in tail in possession, cannot have his estate registered as such. If the land is “settled,” a tenant for life may, with the consent of others interested in the land, apply to have the land registered, and may either himself be the first proprietor—in which case he will have an estate in fee simple, or may allow the trustees of the settlement—provided they have power of sale, or the persons who have an overriding power of appointment—who will then take a fee simple—to be registered as proprietors.¹¹ If the land is settled, persons other than the tenant for life, who are clothed by the Settled Land Acts with powers of sale over the settled land, may also become first proprietors; and in the case of unsettled land (*i.e.* apart from the provisions of the Settled Land Acts), trustees, mortgagees, and others invested with powers of sale, may also apply to be registered as first proprietors of freehold land; of course, the applicants may be fiduciary owners in fact, without disclosing this.¹²

Beneficial owners who are entitled to apply for first registration are: persons who (i.) have contracted to purchase the fee simple—the vendor consenting; (ii.) are “entitled” to the fee simple “at law or in equity”; (iii.) can dispose by way of sale of the fee simple; in any of these cases the fee simple may be subject to incumbrances, and the applicant may have either himself or a nominee or nominees registered as first proprietor.¹³ If the entire fee simple is not vested in a single person, but there are, for instance, tenant for life and remainderman, all the persons together entitled to a legal or equitable fee, or entitled to dispose of the fee, may become joint first proprietors;¹⁴ this is a course which would not be very often adopted, but the rights of each proprietor could be protected as in the case of fiduciary proprietors. Where the land is registered in the names of more than one proprietor, the proprietors’ powers of disposition will be restricted by appropriate entries on the register, unless they are in fact

⁹ 1875, ss. 49–52; 1897, s. 6; 1903, r. 46.

¹⁰ 1875, ss. 7, 50; 1903, r. 64.

¹¹ 1875, s. 68; 1897, s. 6; 1903, rr. 78–82; Settled Land Act, 1882, ss. 2 (5), 3.

¹² 1875, s. 68 (see pp. 23, 29, *ante*), 83 (3), as amended by 1897, sched. 1; 1903,

rr. 83–86, 224, 225; Settled Land Act, 1882, ss. 58, 63; Settled Land Act, 1884, s. 8.

¹³ 1875, s. 5; 1897, s. 14 (1), repealing so much of 1875, s. 83, as limits the number of co-proprietors.

¹⁴ 1875, s. 69; 1897, s. 14 (1).

beneficially entitled.¹⁵ Each of the three cases above mentioned requires some separate notice.

i. A mere contract to purchase is sufficient—provided the vendor consents—to entitle the purchaser to apply for first registration. The key-note of the system is here struck: Where the difference between a legal and an equitable estate is purely technical, and the legal estate does not represent any enforceable right of property—beneficial or fiduciary—the rights represented by the equitable estate only are regarded, and are accordingly allowed the benefits of the statutory title conferred by registration. The vendor is not required to convey the land formally to, or otherwise vest the legal estate in, the purchaser, in order to entitle the latter to become registered proprietor of the land; it is sufficient if the vendor simply “consents” to the purchaser’s application—for instance, by joining in and signing the instrument of application,¹⁶ thereby admitting, in effect, that his own claim to be paid the purchase money is satisfied and the terms of the contract for sale otherwise fulfilled, and that the purchaser is complete equitable owner.¹⁷ The practice of the Land Registry appears to be to accept other sufficient evidence of the payment of the purchase money and dispense with the vendor’s consent,¹⁸ thus regarding the purchaser as “entitled in equity” and classing the transaction under the heading next to be noticed. The “consent” of the vendor is, of course, compatible with his taking security for part of the purchase money, and only consenting to the purchaser’s registration on condition that the security appears on the register as an incumbrance.

ii. The case of a person being “entitled” either “at law or in equity” is illustrated by the case of a purchaser who has paid his purchase money and taken possession. In accordance with the principle of the system above referred to, the concurrence or consent of the vendor—who, under the circumstances, would be in the position of a bare trustee—would not be required in order to entitle the purchaser, his cestui que trust, to become first proprietor. Another illustration is the case of a mortgagor, the legal estate being in the mortgagee and the mortgage unredeemed; the applicant would then be “entitled in equity,” but “subject to incumbrances,” and on the registration of the land the mortgage would appear on the register, and if the mortgagee so desired, as a registered

¹⁵ 1875, s. 83 (3), as amended by 1897, sched. 1.

¹⁶ Such a case would seem to be properly governed by the analogy of 1903, r. 106. A mere memorandum of consent signed by a mortgagee, and attached to the application of the mortgagor, is suffi-

cient under the Australian system: *In re Lackersteen* (1898), 14 W.N. (N.S.W.), 166.

¹⁷ See *Ridout v. Fowler*, [1904] 1 Ch. 658 (affirmed 2 Ch. 931), for a recent statement of the law on this point.

¹⁸ Brick. & Shel. (2nd ed.), 371, note under 1903, r. 18.

incumbrance conferring the same rights as a registered statutory charge.¹⁹

iii. The capacity of "disposing" of the fee simple will usually be constituted by a power of appointment being vested in the applicant for first registration. No actual estate, legal or equitable, need be vested in the donee of the power, who will nevertheless take a fee simple, on registration, as in the last two cases. It is not stated in the enactment that the "fee simple" to be "disposed of" may be either legal or equitable, but according to the analogy of the two preceding heads it would seem to be sufficient if the power were an equitable one only, leaving the legal estate, as before, either outstanding in a bare trustee, or to constitute an incumbrance on the registered proprietor's fee simple. If the power were a legal one, the legal estate might still remain outstanding, since the application to register the land is not necessarily an exercise of the power, though, if the land were directed to be registered in the name of a nominee or nominees, such a direction might operate as an exercise of the power so as to vest the legal estate in the nominee. The power of disposition referred to in s. 5 of the 1875 Act appears not to include a mortgagee's power of sale, etc., since that and analogous powers are expressly provided for in s. 68 (*ante*, p. 51).

2. Leasehold land, in order to be registered, must be held under a lease "derived out of land of freehold tenure," and "for a life or lives or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired;" the lease must not contain an absolute prohibition against alienation, and must not have created a term for merely mortgage purposes; the reversion may be either freehold or leasehold.²⁰ Leases "derived out of" land vested in the Crown, or copyhold land as before defined (*ante*, p. 50), are thus excluded, but not, it would seem, leases of any public lands which could be said to be "of freehold tenure"—i.e. not vested in the Crown by its prerogative title. Leasehold land may be registered, notwithstanding that a sub-lease is in existence and the land comprised in the sub-lease also registered, just as freehold land may be registered although the actual parcels comprised in the freehold ownership are also registered as leasehold land.²¹

It is provided by r. 66 that the term, of which more than twenty-one years must be unexpired, need not be one continuous term, but may be partly created by a reversionary lease to take effect within

¹⁹ 1897, s. 22 (6) (c); 1903, rr. 175-177.

²⁰ 1875, ss. 2, 11 (as amended by 1897, sched. 1); 1903, rr. 60, 63, 64.

²¹ 1903, rr. 64, 218-220. In such cases the property in the leasehold land may be

said to be both in the nature of ownership and also of incumbrance, the "inferior" lease being noted as an incumbrance on the "superior" leasehold title or the freehold title.

a month after the expiration of the lease in possession. It seems possible that this rule might be held *ultra vires*, since it purports to effect an alteration in the law which does not appear to be authorized by the rule-making powers conferred under s. 111 of the 1875 Act and s. 22 of the 1897 Act. A reversionary lease confers an *interesse termini* only—a right and not an estate, even in equity;²² in order to make the words “term of years,” etc., in s. 11 of the 1875 Act, include a mere right to have a term at a future date, the express enactment—i.e. by direct enactment or indirectly by conferring rule-making authority—of the legislature would be required.

The Acts distinguish between a “lease for a life” and such interests as the estate of a tenant for life, estates in dower or by the curtesy, etc. Although in one sense a freehold estate for life is a lease for life, yet as “a lease for a life” is always mentioned in the Acts and Rules in connexion with leasehold land only,²³ it seems impossible so to construe s. 11 of the 1875 Act as to enable any person to register as “leasehold land,” land which has been conveyed to him for life without any of the ordinary incidents of a lease, such as reservation of rent, etc. Moreover, both in s. 11 of the 1875 Act, and in r. 69, the case of a person being a tenant for life in the ordinary sense appears, by the actual language used, to fall just outside the category of persons entitled to register land as leasehold.

Beneficial owners who are entitled to apply for first registration of leasehold land are described in nearly the same way as owners of freehold land (*ante*, p. 51). They are: Persons who (i.) have contracted to purchase “leasehold land”—the vendor consenting; (ii.) are “entitled” to leasehold land “at law or in equity;” (iii.) can dispose by way of sale of leasehold land; in any of these cases the “leasehold land” may be subject to incumbrances, and the applicant may have himself or a nominee or nominees registered as first proprietor.²⁴ A number of persons, together entitled to the whole ownership of the leasehold land may, as in the case of freehold land (*ante*, p. 51), be registered as joint proprietors.²⁵ By “leasehold land,” apparently, is here meant land which is already the subject of an existing lease, not land which is not yet, but is only proposed to be, granted for a term. When the proposed lease has been effectually created, the lessee could, of course, register the land comprised in it as “leasehold land;” but the case of a person who

²² *Lewis v. Baker*, [1905] 1 Ch. at 51, 52, where the early authorities are cited.

²³ 1875, ss. 11, 50, 52; 1903, rr. 7, 69. The same distinction between the estate of a tenant for life, ordinarily so called, and

a lease for life, is drawn in the Settled Land Acts: Act of 1882, s. 58 (1).

²⁴ 1875, s. 11 (as amended by 1897, sched. 1); 1897, s. 14 (1); 1903, r. 67.

²⁵ 1875, s. 69; 1897, s. 14 (1).

has merely contracted for a lease does not appear to fall within the wording of the enactments in s. 11 of the 1875 Act. This view is confirmed by the express mention in the Rules of "sale of a lease" and "grant of a lease" in connexion with compulsory registration.²⁶

The other remarks on nominees, the case of several proprietors, and the three different interests in freehold land which entitle the persons interested to become first proprietors (*ante*, p. 51), apply also to leasehold land.

3. The confused use of the word "land"—apart altogether from the distinction between land of the Crown and of subjects—in the Acts and Rules has already been referred to (*ante*, p. 45). In the Acts and Rules the word "hereditament" is sometimes applied to a portion of land, above or below the surface, which is severed horizontally; land, in its most common sense as including the surface, is not usually referred to as a "hereditament." It is, of course, quite unscientific to confine the word "hereditament" to such classes of property as cellars, flats, minerals, tunnels, etc., and to call these "special" hereditaments;²⁷ what is wanted is some term which will serve to bring out more clearly a conception of property in land which is of much greater practical importance than formerly. The expression "horizontal hereditament,"²⁸ as drawing attention to the severance in a horizontal direction, would often be a satisfactory description of such property as tunnels, etc., but it seems better to avoid the use of the word "hereditament" if possible; and, of course, a line of severance might be neither vertical nor horizontal. The expression "spatial area" is suggested as perhaps likely to be of service in denoting immovable property whose boundaries are not entirely vertical and do not extend *a centro usque ad cælum*, or where the property consists of an exclusive right to occupy and use a cubic space or area wholly or partially vacant of soil or buildings.²⁹ Such spatial areas may be registered in a manner generally analogous to surface land³⁰—for instance, the distance above or below the surface, and the length of vertical as well as horizontal boundaries, would have to be shown—and, apparently, they might be registered as freehold or leasehold according to the quantum of their proprietor's ownership in any particular case, notwithstanding the word "tenement" in ss. 75 and 76, which technically, in one sense, should not include leasehold land.

²⁶ 1897, s. 22 (6) (g); 1903, r. 69. See the next section on "compulsory registration."

²⁷ 1875, s. 82; 1903, rr. 71, 74-76.

²⁸ *Metropolitan Ry. v. Fowler* (1893), 1 Reports, at 267, argument; *Brown v. Peto*, [1900] 2 Q. B. at 668.

²⁹ See *Reilly v. Booth* (1890), 44 Ch. D.

12; *Metropolitan Ry. v. Fowler*, [1893] A. C. 416, 1 Reports 264; *Farmer v. Waterloo and City Ry.*, [1895] 1 Ch. 527; *Westminster Corp'n. v. Johnson*, [1904] 1 K. B. 19; *Glasgow Corp'n. v. McEwan*, [1900] A. C. 91, though a Scottish case, is similar.

³⁰ See note 27, *supra*.

4. The prohibition contained in the 1875 Act against the registration of undivided shares is repealed by the 1897 Act, and undivided shares are included in "land."⁸¹ It is contemplated that the land shall either appear once on the register—"under one title," in which case the names of all the proprietors would be entered as part of the same "title," or that the land should be entered more than once—"under separate titles," in which case the name of one proprietor or set of joint proprietors would appear in each "title." There seems to be no reason why a share in any property included in the definition of "land" should not be registered, as, for instance, a share in a spatial area or an incorporeal hereditament. The land, of course, might be either freehold or leasehold.

5. The incorporeal hereditaments, mentioned by way of example as registrable, are manors, advowsons, rents, and tithes; these must be "of freehold tenure,"⁸² and are to be registered in a manner generally analogous to ordinary land⁸³—for instance, it would be necessary to show the boundaries of the lands affected by the rights registered. An easement, though a mere interest in the land of another person, as distinguished from that right to the possession of the land itself which constitutes a corporeal hereditament (in one of its meanings) or property, is an incorporeal hereditament;⁸⁴ there seems to be no reason why an easement appurtenant should not be registered, independently of the dominant land, as being an incorporeal hereditament ejusdem generis with those mentioned above.⁸⁵ The words "of freehold tenure," in s. 82 of the 1875 Act, could hardly be construed so as to exclude from registration an appurtenant right of access to a flat or other spatial area when the spatial area itself was registered, notwithstanding that the ownership was leasehold only; such a right would probably fall within the rights and appurtenances "attached" or "appertaining" to the estate.⁸⁶ The wording of s. 24 of the 1897 Act, by which "land" includes "all hereditaments, corporeal and incorporeal," suggests that only incorporeal hereditaments ejusdem generis with manors, advowsons, rents, and tithes, are intended to be made capable of registration; this would exclude such subjects of property as dignities and titles of honour, New River shares, profits from the tolls of a lighthouse, etc. And the general scope of the system seems

⁸¹ 1875, s. 83 (2), repealed by 1897, sched. 1; 1897, ss. 14 (1), 24; 1903, rr. 71, 77.

⁸² These words are not intended to exclude a rent-charge (1903, r. 73), though technically a rent-charge is not the subject of "tenure": Wms. R. P. (14th ed.), 354.

⁸³ 1875, s. 82; 1903, rr. 71-73.

⁸⁴ *Reilly v. Booth*, and *Metropolitan Ry. v. Fowler*, *supra*.

⁸⁵ 1875, s. 82. The words "enjoyed in gross" are repealed by sched. 1 of the 1897 Act.

⁸⁶ 1875, s. 13; 1903, rr. 254, 255.

to exclude from the possibility of registration, as such, remainders and reversions—though these are sometimes classed as incorporeal hereditaments.

The only classes of owners of land whom it will be necessary to mention specially are: (1) Married women; (2) infants and lunatics; (3) corporations and quasi-public trustees.

1. The 1875 Act contemplated that the husband of a married woman should join in applying for registration of her land, and that they should be registered as "co-proprietors,"³⁷ no mention being made of the case of a married woman entitled for her separate use. In most cases where the separate use existed the trustees would be more than bare trustees, and the equitable fee, or the term of years, would not enable a married woman to be registered as proprietor of the land (*ante*, p. 52), even if her husband's interest were noted on the register. The 1897 Act merely enacts that ss. 44, 45, and 83 (4) of the 1875 Act, "shall not apply to the case of" women married after 1882, "or to any property to which a married woman is entitled for her separate use."³⁸ The exception contained in s. 87, as to equitable separate estate, is thus introduced into ss. 44, 45, 83 (4), and the provisions of the Married Women's Property Acts, which create a legal separate estate, are made applicable to registered land. The capacity of a woman, married after 1882, to apply for first registration will be determined by the provisions of the Married Women's Property Acts; it will probably be found that in most cases a married woman cannot, owing to the provisions of s. 19 of the Married Women's Property Act, 1882,³⁹ apply for first registration as though she were unmarried.

2. It is provided, by s. 88 of the 1875 Act, that infants and lunatics may make application, etc., by their guardians or committees.

3. "Person," in the Acts of 1875 and 1897, "includes a corporation, and any body of persons unincorporate;" a corporation might be aggregate or sole, and the capacity to hold and dispose of land would be for the corporation who applied to become first proprietor to show as part of its or his title along with evidence of incorporation, and this is provided for in the Rules.⁴⁰ R. 256 includes bodies of trustees, and special rules have also been made with respect to the registration of land held for charitable uses.⁴¹ A corporation sole will usually be either ecclesiastical or created by statute. An

³⁷ 1875, s. 83 (4), amended by 1897, sched. 1. And see ss. 44, 45 (amended), and contrast s. 87, which is the only section of the 1875 Act in which the separate use is mentioned.

³⁸ 1897, sched. 1 (amending 1875, ss. 44, 45, 83). And see note 37.

³⁹ By s. 19 settlements are not affected: see *In re Lumley*, [1896] 2 Ch. 690; *Buckland v. Buckland*, [1900] 2 Ch. 534.

⁴⁰ 1875, s. 4; by s. 26 of the 1897 Act, the latter is to "be construed as one with the" 1875 Act; 1903, r. 256.

⁴¹ 1903, rr. 83-86, 257.

ecclesiastical corporation sole is, for practical purposes, in the position of a tenant for life, though he has not the powers of a tenant for life under the Settled Land Acts;⁴² a statutory corporation sole is usually a trustee, or in the position of a trustee. Each of these corporations sole would be registered as proprietor, but the difference in their rights would be indicated by appropriate restrictions and other entries on the register. The case of an ecclesiastical corporation sole is expressly provided for, and an inhibition will be placed on the register, and on the land certificate, which will prevent any disposition of the land being made without the consent of the Ecclesiastical Commissioners or other specified bodies, and will also prevent any lien being created by deposit of the land certificate.⁴³

SECTION 3.—COMPULSORY REGISTRATION.

The provisions for compulsory registration affect only: (1) Some parts of England and Wales; (2) some classes of property; (3) some transactions. (4) The case of a county council purchasing land under the Small Holdings Act, 1892, is distinct and anomalous.

1. In order to become subject to the provisions relating to compulsory registration, a county (which has the same meaning as in the Local Government Act, 1888), or part of a county, must be mentioned or defined in an Order in Council declaring that, on and after a specified day, registration of title to land is, as respects that county or part of a county, to be compulsory on sale, and such an Order may be revoked or varied.¹ Six months' notice of any proposed Order is to be given to the council of the county to be affected, but now that the operation of the first Order—affecting the county of London—is exhausted, an Order can only be made on a county council signifying, pursuant to a resolution at a meeting of two-thirds of the council, its desire that registration of title shall be compulsorily applied to the county or part of a county.² The Order must be duly laid on the table of both Houses of Parliament, and will be void if an Address disapproving of it be carried in either House; notice of the proposed Order must also be duly published in the *London Gazette* before it is made, unless certified to be urgent by the rule-making authority.³ Up to the present time only the county of London has been brought under the provisions for compulsory registration.⁴

⁴² *Mulliner v. Midland Ry.* (1879), 11 Ch. D. at 622; *Ex parte Castle Bytham*, [1895] 1 Ch. 348.

⁴³ 1897, s. 15.

¹ 1897, s. 20, sub-ss. 1, 4, 11, 12.

² 1897, s. 20, sub-ss. 5, 8.

³ 1897, s. 20, sub-s. 9; Rules Publication Act, 1893 (56 & 57 Vict. c. 66), ss. 1, 2.

⁴ The Orders in Council are dated respectively July 18, 1898, October 20, 1898, November 28, 1899, March 9, 1901,

2. The property, of which the title must be registered under certain circumstances, is spoken of as "land"—freehold or leasehold—without qualification.⁵ The wide definition of "land," and the exceptions with respect to non-compulsory or voluntary registration, have already been referred to (*ante*, pp. 48, 49). In addition to the classes of property excepted altogether from the provisions of the Acts relating to first registration, further exceptions are made from the provisions relating to compulsory first registration. These are:—⁶

- i. Incorporeal hereditaments.
- ii. Mines or minerals apart from the surface.
- iii. Leases having less than forty years to run, or less than two lives yet to fall in.
- iv. Undivided shares in land.
- v. Freeholds intermixed with, and indistinguishable from, lands of other tenure.
- vi. Corporeal hereditaments parcel of a manor, and included in a sale of the manor as such.

i. The typical incorporeal hereditaments mentioned in the Acts and Rules are manors, advowsons, rents, and tithes (*ante*, p. 56). It may occasionally be difficult to say whether a hereditament is corporeal or incorporeal; cases decided on the liability of land to land tax, poor rate, etc., afford illustrations of this.⁷ But the distinction between ownership and easement does not necessarily determine the liability to be rated—which is often in respect of paramount occupation only, and the line of cleavage between rateable and non-rateable interest is not always the same as that between corporeal and incorporeal hereditaments, or ownership and easements.⁸ The question whether an estate in remainder or reversion could be registered, as being an incorporeal hereditament, is referred to *ante*, p. 57. In any case, even if registrable, such an estate would not be compulsorily registrable.

ii. Mines and minerals constitute the only exception of "horizontal" hereditaments. Any spatial area, such as a flat or set of chambers above the ground floor, or a tunnel or vacant space below or above the surface, would fall within the provisions relating to compulsory registration, if the right of occupation amounted to "ownership" in fee or for an otherwise sufficient length of time.⁹

December 10, 1901, and March 6, 1902; they may be found in the Statutory Rules and Orders; see Statutory Rules and Orders Revised, 1904, vol. vii., "Land Registration (England)," p. 118. See also Br. & Shel. (2nd edit.), 533-536.

⁵ 1897, ss. 20 (1), 22 (6) (g); 1903, rr. 68-70.

⁶ 1897, s. 24.

⁷ See *Metropolitan Ry. v. Fowler*, [1893] A. C. 416; *Furmer v. Waterloo and City Ry.*, [1895] 1 Ch. 527; *Glasgow v. McEwan*, [1900] A. C. 91; *Westminster v. Johnson*, [1904] 1 K. B. 19.

⁸ *Holywell Union v. Halkyn Drainage Co.*, [1895] A. C. 117.

⁹ See *Reilly v. Booth* (1889), 44 Ch. D. 12; *Metropolitan Ry. v. Fowler*, *supra*.

iii. By "a lease having less than forty years," etc., is meant what is elsewhere called "leasehold land" held under such a lease. As to treating a lease in possession and a reversionary lease as one continuous term, see *ante*, p. 54.

iv. Under the 1875 Act one tenant in common or joint tenant could not place his own estate on the register—the entirety of the land must have been the subject of any first registration; the 1897 Act amended this, and allowed an undivided share to be placed on the register, but excluded it from the operation of the compulsory provisions.¹⁰ The mere permission to register an undivided share will probably produce some inconvenience; one objection to it is that it seems to offer an opportunity for avoiding the compulsory registration provisions. Thus, one undivided moiety of the land might be conveyed to a purchaser by one deed, and the other moiety by another deed subsequently executed, the result being that in each case the legal estate might pass to the purchaser. It is not certain, however, that this experiment would succeed, unless the contract for sale were also divided into two in a similar manner; a contract for sale is a "conveyance on sale" within the meaning of s. 20 (2) of the 1897 Act, and might be held to be the document which governed the transaction. For the same reason, it seems possible that if one undivided contract were made for sale to two persons as tenants in common, the mere fact that each tenant in common took his conveyance by a separate deed might not give them the legal estate without registration. Certainly, it would seem that a conveyance to tenants in common by a single deed would not constitute a title to an undivided share, within the meaning of s. 24 of the 1897 Act, so as to enable the purchasers to get the legal estate without registration.

v. The lands "of other tenure" evidently refer to copyhold lands, including such customary freeholds as pass by entry in a manor roll, etc.¹¹

vi. This appears to be the only place in the Acts and Rules where land, in its ordinary sense of surface land, is directly referred to as a "corporeal hereditament." These corporeal hereditaments will include the demesne lands and the waste lands of the manor, which will almost necessarily be freehold if the manor is of freehold tenure.¹² Enfranchised copyholds would not be "parcel of" the manor "and included in the sale of the manor as such," even though the lord's rights—as to escheat, etc.—in the enfranchised land did pass by a conveyance of the manor.¹³

¹⁰ 1875, s. 83 (2), now amended by 1897, sched. 1; 1897, ss. 14 (1), 24.

¹¹ 1875, s. 2 (amended by 1897, sched. 1).

¹² Scriven on Copyholds (7th ed.), 4, 10.

¹³ See Copyhold Act, 1894, ss. 21-24.

The property, then, which is affected by the compulsory provisions will be all property which may be registered except the six classes just enumerated.

3. The broad principle, with respect to the transactions affected by the provisions for compulsory registration, is that registration is to be "compulsory on sale" of land situate in the district affected, and falling within one of the classes of property affected. Mortgage transactions are thus excluded. Although "sale," for the present purpose, includes some lease transactions—i.e. those just referred to above—it does not include all lease transactions. Leases for less than forty years, or for a life, may be made of land in a compulsory district without bringing the land comprised in the lease within the compulsory provisions of the system. Settlement transactions also appear to be excluded, and land in a compulsory district may therefore be settled—using the word in its ordinary sense, and excluding such transactions for valuable consideration as are usually said to fall under the head of sale—either by deed or will without subjecting the settled land to the necessity of registration. There are also other transactions involving a conveyance or transfer of property which could not, in any usual sense of the word, be said to be made "on sale" of the property, and which therefore will not subject the land to the necessity of registration. Among such transactions are assurances by trustees to their beneficiaries, partition, and exchange. The analogy of the Stamp Act may perhaps be referred to as supporting the view that neither a partition nor an exchange is to be regarded as a "sale"; but under some circumstances a conveyance by an executor to a legatee might be regarded as a sale.¹⁴ The same analogy supports the view, which otherwise also seems reasonable, that a conveyance in consideration of a rent-charge or annuity, instead of a lump sum of money, is to be regarded as made on a "sale";¹⁵ on such a transaction taking place the land would therefore have to be registered.

It remains to examine the question of the exact meaning of the expression "compulsory on sale," and the machinery provided by the Acts and Rules for "compelling" registration. By "registration" in connexion with "compulsion" is always meant "first registration;" the "compulsion" referred to in the 1897 Act and 1903 Rules is the means resorted to for inducing proprietors to place their land on the register, and when once that has been done, although the system may in a sense be said to

¹⁴ By the Stamp Act, 1891, s. 73, instruments of partition or exchange are only dutiable as conveyances "on sale" where money exceeding £100 is paid and given for equality, and duty is only payable in respect of the monetary considera-

tion. But a transfer of stock by an executor to a legatee, in part satisfaction of a legacy, has been held to be dutiable as made on "sale": *Dawson v. Commissioners of Inland Revenue*, [1905] 2 I. R. 69.

¹⁵ See Stamp Act, 1891, s. 56.

"compel" registration of future transactions, the registration of such transactions is never referred to as "compulsory." As already pointed out (*ante*, p. 44), what is in terms made "compulsory" is registration of "title"; but this has exactly the same meaning as registration of the "land," or of the "proprietor."

The plan adopted is to enact, in effect, that if, when, and where registration is compulsory, no "legal estate" passes to a purchaser before the land is registered;¹⁶ "it is merely a sort of indirect compulsion, a means of getting the land on the register,"¹⁷ and if the purchaser does not want the "legal estate" he need not register, in which case he would have only an equitable estate, whilst the land would remain subject to the general law in every respect, except that no conveyance of it would have the effect of vesting any legal estate in the purchaser. The vendor would be a trustee for the purchaser, and the legal estate would presumably be capable of being vested (whether by actual conveyance or appointment of new trustees) in new trustees from time to time.¹⁸ It has been suggested¹⁹ that a conveyance from the new trustee to the purchaser might vest the legal estate in him; but this seems extremely doubtful.

The above remarks on the vendor holding the legal estate as trustee for the purchaser, and transferring that legal estate to new trustees, apply literally, of course, only to cases where the vendor himself has the legal estate; the same principle would apply to cases where, although the purchaser was entitled under his contract to have the legal estate, this was actually vested in some one other than the vendor. But the subject of sale may be an equitable interest, or an equity of redemption, and the legal estate may be intended by the terms of the contract to be left outstanding in trustees or mortgagees. This seems to be a *casus omissus*; the general spirit of the compulsory provisions seems to require that the purchaser should be "compelled" to register, *i.e.* should be less secure—under the general law, and apart from the intrinsic advantages of registration—if he will not register. Unless, however, "legal estate" is to have a new meaning—which is referred to further on—there does not appear to be anything in the actual language of the Acts or Rules which would justify any distinction being made between one equitable interest and another in this respect; the purchaser who will not, and the purchaser who cannot, get the legal estate, are placed on the same footing, so that—since the withholding of the legal estate is the only penalty—the threat

¹⁶ 1897, s. 20, sub-s. 1, 2; 1903, rr. 68-70.

¹⁷ *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. at 657.

¹⁸ As to the right of an owner to have trustees if he wishes, and the limits of the

risk he runs in so doing, see *Rimmer v. Webster*, [1902] 2 Ch. 163, 170, and cases there referred to.

¹⁹ *Brick. & Shel. Land Transfer Acts*, 339 (2nd ed.).

of being deprived of it is a mere *brutum fulmen* to the purchaser of an equitable interest. The most common cases of such equitable interests will no doubt be equities of redemption where the legal estate is in the mortgagee; but, of course, the land may be in mortgage and the legal estate still vested in the mortgagor, as where the mortgage is effected by the creation of a long term of years in the case of freehold land, or by demise in the case of leasehold land. In such cases the purchaser would be amenable to "compulsion," and would have to register as the price of not leaving the legal estate outstanding.

It may sometimes be important, in investigating the title to unregistered land situate in a compulsory registration district, where a sale has taken place about the date when registration became compulsory in the district, to ascertain the exact day on which the compulsory provisions came into operation, and so prevented the legal estate from passing to the purchaser by an ordinary conveyance. This day is the day specified in the Order in Council, and a conveyance, assignment, or lease, made on sale and executed "on or after"—in the case of leasehold land, or a lease, "after"—that day, will not vest the legal estate in the purchaser before registration. "Conveyance on sale," in s. 20 of the 1897 Act, is expressly made, by sub-s. 2, to include a contract for sale, which by s. 5 of the 1875 Act confers a title under which an application for first registration may be made, and an analogous meaning is given to "assignment" and "lease" in 1903, r. 70; but the words in sub-s. 1 of 1897, s. 20, are "any conveyance on sale," and this would include the formal conveyance, even though the contract might equally be a "conveyance on sale." The mere fact, therefore, of the contract having been executed before the day on which registration became compulsory seems immaterial, and if any conveyance to the purchaser is executed "on or after" that day, the legal estate will not pass—or in other words the registration is compulsory.

The following table is taken from the Order in Council of July 18, 1898, as altered by subsequent Orders in Council, and shows the dates on which registration became compulsory in the county of London:—

The parishes of Hampstead, St. Pancras, St. Marylebone, and St. George's, Hanover Square	...	...	...	...	...	} Jan. 1, 1899.
The parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, St. George's-in-the-East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar	...	...	...	...	...
The remainder of the county (not including the city of London) north of the centre line of the River Thames, except North Woolwich	...	...	...	...	...	} March 1, 1899.
	
	...	...	...	...	...	} Oct. 1, 1899.
	

The parishes of Christ Church (Southwark), St. George the Martyr, Camberwell, Horselydown, Lambeth, Bermondsey, Newington, Rotherhithe, St. Olave and St. Thomas, St. Saviour and the detached part of the parish of Streatham situate between the parishes of Lambeth and Camberwell		Jan. 1, 1900.
The parishes of Battersea, Clapham, Putney, Tooting Graveney, Wandsworth, and the remainder of the parish of Streatham		May 1, 1900.
The remainder of the county, except the city of London		Nov. 1, 1900.
The city of London		July 1, 1902.

A detailed table is also given in Br. & Shel. (2nd ed.), pp. 55-57; and see note 4, *ante*, p. 58.

It will now be necessary to examine the provisions relating to compulsory registration on sale somewhat more in detail, in order to ascertain, if possible, whether the introduction of the expression "legal estate" has modified the provisions contained in ss. 5 and 11 of the 1875 Act (*ante*, pp. 52, 54), which enable an owner with an equitable estate only to become first registered proprietor and so acquire statutory rights of ownership in lieu of any rights conferred by a technical seisin, possession, or "legal estate." It will be convenient to deal separately with: (i.) freehold land, referred to in s. 20 of the 1897 Act; (ii.) leasehold land, referred to in r. 69 of the 1903 Rules.

i. S. 5 of the 1875 Act (*ante*, p. 52) enables a person who has merely contracted to purchase land, or otherwise has an equitable estate only, to become registered proprietor and thus acquire an estate in fee simple. The expression "at law" as applied to an estate in fee simple, and which is a synonym for "legal" fee simple, is used in sub-s. 2 in order to emphasize the provision of the enactment which makes it unnecessary for a beneficial owner to have the legal estate in order to be allowed to become registered proprietor; the only other place in the Acts and Rules in which "legal" fee simple, or its equivalent, is mentioned is s. 20 (1) of the 1897 Act, where the expression is "legal estate" in "freehold land." The enactment in sub-s. 1 of s. 20 is that "a person shall not, under any conveyance on sale executed on or after the day" specified in the Order in Council, "acquire the legal estate in any freehold land in" the specified district "unless or until he is registered as proprietor of the land." In sub-s. 2 "conveyance on sale" is defined as "an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act." Now the expression in s. 20 (2)—a title "conferred or completed"—seems to refer to two cases, to both of which "conveyance on sale" as here defined would apply, provided for in s. 5 of the 1875 Act, namely, the case of a person who has an equitable fee only, and the

case of a person who has a complete legal fee; the case of a person having a power need not be considered in this connexion, for such a person would not, quâ donee of the power, have any estate legal or equitable, and if he did have an estate as well as a power he would fall under one or other of the other cases. The expression "under any conveyance on sale" must mean "under a formal conveyance on sale or under any document executed in pursuance of a conveyance on sale," since a contract for sale, or other assurance of an equitable interest, falls within the definition of "conveyance on sale." A "conveyance on sale" by which an equitable fee only would pass would "confer" a title under which an application for first registration might be made, and a "conveyance on sale" by which a legal fee would pass would "complete" a title under which an application might be made. The expression in s. 20 (1)—"unless or until"—may perhaps be taken as corresponding with "conferred or completed" in s. 20 (2). The enactment might then be paraphrased thus: in the case of a conveyance on sale which only "confers" a title to apply for registration, the purchaser is not to acquire "the legal estate" "unless" he registers the land; in the case of a conveyance on sale which "completes" a title to apply for registration, the purchaser is not to acquire "the legal estate" "until" he registers. The meaning seems to be that, although the purchaser may after getting his equitable fee try to get in the legal fee, no further conveyance is to have any effect in enabling him to acquire "the legal estate" before he registers; whilst, if he has taken a conveyance by which he should ordinarily have acquired "the legal estate," yet he is not to acquire "the legal estate" before he registers. What then is meant by "the legal estate" in s. 20? S. 5 of the 1875 Act says nothing about acquiring any legal estate by registration, but on the contrary does say that a person may become registered proprietor without having any legal estate prior to registration. It is submitted that "legal estate" must have its ordinary technical meaning, that the apparent implication as to some "legal estate" being vested in the proprietor solely by registration of the land must be disregarded, and that neither in s. 20 of the 1897 Act nor in s. 5 of the 1875 Act is there to be implied any provision for making the legal estate vest in a proprietor if he had not already had it assured to him by some conveyance which only the express provisions of s. 20 prevented from taking effect at the time of execution. In other words, the enactment that a purchaser "shall not . . . acquire the legal estate . . . unless or until he is registered" refers only to cases where the purchaser would have, but for the enactment, already acquired the legal estate before registration, and does not operate to vest in a proprietor any

legal estate, in its technical sense, which he has not otherwise got in.

Although this construction has the advantage of giving one meaning only—the ordinary technical meaning—to “legal estate” wherever it, or its equivalent, occurs in the Acts or Rules, yet it is not quite satisfactory that this should involve disregarding the implied statement that, on the land being registered, the proprietor—even if he applied on the strength of an equitable title only—does get a “legal estate.” One solution would, of course, be to construe the enactment as directing that the ordinary legal estate should vest on registration notwithstanding that it had never been conveyed to the proprietor, but this seems quite inadmissible in view of the provisions as to the effect of registration with possessory title. Possibly the draftsman was regarding the new statutory estate to be conferred on the proprietor as a “legal estate,” and did not clearly see the result of using the word in two senses. The difficulties, however, of giving “legal estate”—as it is used in the Acts and Rules—the meaning of “registered proprietorship” would, it is conceived, be greater than those which the ordinary construction involves. One more possible explanation seems worth suggesting, *i.e.* that the draftsman was using “legal estate” in the sense of actual or valid estate in the land as distinguished from a mere contractual right. The analogy of r. 69 of the 1903 Rules is somewhat in favour of this; another argument in its favour is that since the Judicature Acts the word “legal” is sometimes used to include equitable rights which only differ technically from legal rights, as distinguished from merely contractual rights which are not in a position to be at once enforced by the Court which is administering law and equity concurrently.²⁰ But it is conceived that, although the actual words “legal estate” occur only in two places in the Acts and Rules (1897, s. 20, and 1903, r. 69), there is not sufficient indication shown, in other parts of the Acts and Rules, of the intention of the legislature to use these words otherwise than in their ordinary technical sense.

ii. By r. 68 of the 1903 Rules an Order in Council under s. 20 of the 1897 Act extends to “sales of leasehold as well as of freehold land, and to grants of leases and underleases.” S. 11 of the 1875 Act (*ante*, p. 54) enables a person who has merely contracted to purchase leasehold land, or otherwise has an equitable estate only in land which is then “leasehold,” to become registered proprietor

²⁰ See *Warren v. Murray*, [1894] 2 Q. B. at 651; *Driscoll v. Battersea*, [1903] 1 K. B. at 887. And see the Chancery cases on agreements for lease: *Walsh v. Lonsdale* (1882), 21 Ch. D. at 14; *Manchester Brewery*

Co. v. Coombs, [1901] 2 Ch. at 616, 617. “Legally” is also used in the Acts and Rules in the sense of “validly” or “lawfully”: 1875, s. 84; 1903, rr. 100, 130.

of the "leasehold land," but, as already pointed out (*ante*, p. 55), a mere agreement for a lease—as distinguished from an agreement for sale of an existing leasehold interest—does not seem to confer a title under which an application for first registration can be made. "At law," and "legal" estate, are used in s. 11 and in r. 69 respectively, just as in the corresponding enactments relating to freehold land above referred to. Rules 69 and 70 are modelled in s. 20 of the 1897 Act, sub-ss. 1 and 2, and although the general result, as to the necessity for registration in order to vest any legal estate in the purchaser, and the effect of the registered proprietor not having got in any legal estate at all, is substantially the same as in the analogous case of freehold land, yet the draftsmanship is somewhat different. Rule 69 thus states the effect of a compulsory Order in Council: "an assignment on sale of a lease or underlease having at least forty years to run, or two lives yet to fall in, and a grant of a lease or underlease for a term of forty years or more, or for two or more lives, executed after the day specified in the Order and capable of registration, shall operate only as an agreement, and shall not pass any legal estate to the assignee or lessee unless or until he is registered as proprietor of the lease or underlease." Then follows an exception in favour of assignees or lessees who are trustees of a settlement for the purposes of the Settled Land Acts, to whom "the legal estate in the land" may pass, provided the tenant for life is registered as proprietor of the land within a month, or any further time allowed by the registrar. By r. 70 "assignment" and "grant of a lease or underlease" are to "apply to any instrument by virtue whereof is conferred or completed a title under which an application for registration as first proprietor of leasehold land may be made." It will be noticed that, to come within the compulsory provisions, the assignment or lease must have been executed "after" the day specified in the Order in Council, though with respect to freehold land the expression used in 1897, s. 20, is "on or after." There seems to be no reason for this discrepancy, which is liable to cause confusion. The 1903 Rules simply repeat the 1898 Rules (rule 59) on this point.

The words "shall operate only as an agreement," in r. 69, do not appear in s. 20 of the 1897 Act; in that section, relating as it does to freehold land only, they would probably have been redundant for practical purposes, since they would have added nothing to the prohibition against the legal estate passing. In the rule, relating to leasehold land and leases, the words are not necessarily redundant, but appear to refer to the well-known distinction between an agreement for a lease and an actual demise,²¹ and to mean that

²¹ See *Driscoll v. Battersea*, [1903] 1 K. B. at 884, and Clause 12 there set out:

the assignee or lessee, besides not having the legal estate, is not to be taken as holding on the same terms as though the lease had been assigned or granted, under the doctrine of *Walsh v. Lonsdale*.²² If this is so, points of great difficulty are likely to arise in the event, before the assignee or lessee registers, of any proceedings being taken by the lessor or assignor, or by the lessee or assignee, which require as their foundation that the lessee or assignee should be in the position of a legal termor—or should have a “legal interest” in the land—and not have merely an agreement for a term, not complete even in equity. On the sale of a leasehold, or grant of a lease, it will be the interest of the vendor or lessor to insist on his purchaser or lessee registering promptly.

The mention in r. 70 of “grant of a lease or underlease” appears to imply that the draftsman believed that an agreement for a lease would be sufficient title under s. 11 of the 1875 Act to apply for first registration. But it would seem that this is not so, as already pointed out (*ante*, p. 67).

The general effect of the use of the expression “legal estate” in r. 69 appears to be the same as its use in s. 20 of the 1897 Act, and the proper inference to be drawn appears to be the same as in the case of freehold land, *i.e.* that registration does not per se vest the legal estate in the registered proprietor. “Legal estate” also appears to have the same meaning as in s. 20, but owing to the difference—apart from the Land Transfer Acts—between freehold and leasehold land, and to the express reference to the operation of “agreements,” the rights of purchasers of leasehold and lessees who do not register are probably not completely analogous to the rights of purchasers of freehold land who do not register. The subject of *interesse termini* (which is peculiar to terms of years) is referred to *ante*, p. 54, note 22.

4. By s. 10 of the Small Holdings Act, 1892, when a county council have purchased land under the Act, “they shall apply for their registration as proprietors thereof with an absolute title under the Land Transfer Act, 1875;” and by s. 19 of the Land Transfer Act, 1897, when a county council do apply for registration as proprietors in pursuance of s. 10 of the Act of 1892, they may be registered as proprietors “with any such title as is authorized by the” 1875 Act. A county council may therefore apply for first registration with possessory title only, even when the land is not in a compulsory district. If the land is in a compulsory district, and

“This agreement is intended to operate as an agreement only, and not as an actual demise of the premises so as to give the intended lessee *any legal interest* therein until the leases . . . shall have been executed.”

²² (1882), 21 Ch. D. at 14; and see *Manchester Brewery v. Coombs*, [1901] 2 Ch. at 616, 617. These cases relate to lessees; the position of an assignee is illustrated by a New Zealand case, *Timaru v. Hoare* (1898), 16 N. Z. R. 582.

is otherwise subject to the compulsory provisions of the Land Transfer Act, 1897, the council on purchasing land will be in the same position as other purchasers. But although the Small Holdings Act, 1892, enacts that they "shall" apply for registration, no means of compulsion, or penalty for not registering, are provided. The only practicable remedy appears to be for a purchaser from the county council, if he does complete without registration by the council or by himself being effected, to take the proper proceedings against the council in order to compel them to register, if they refuse to do so.

SECTION 4.—PROCEDURE ON FIRST REGISTRATION.

It will be convenient to deal separately with (I.) Freehold land; (II.) Leasehold land; (III.) Special classes of land, including incorporeal hereditaments.

I. Proceedings to register freehold land are initiated by delivering at the registry an application in prescribed form, together with documentary evidence of the applicant's title. The application may be made for registration with (1) possessory title; (2) absolute title; the evidence required will vary accordingly.¹

In deciding whether to apply for possessory, or for absolute title, the owner of the land will primarily, of course, be guided by the state of his title to it. But there are other considerations which may influence him. Other things being equal, an owner will do well to apply for registration with possessory title when his land is in a compulsory district, and he only registers in order to get the legal estate in; there is, for practical purposes, no interval between application and registration, and any risk of the legal estate getting into other hands is thus avoided. Absolute registration can be applied for immediately afterwards if desired. If registration is desired for the sake of the intrinsic advantages afforded by a registered title, application for registration with an absolute title is usually the better course; unless the owner is desirous of dealing with the land at once, the interval of several months which will usually elapse between application and registration will not be of any great moment.

1. An application for registration with possessory title is made by delivering at the registry:—²

i. A formal application in writing, or draft entries, signed by the applicant;

¹ 1875, ss. 5, 6.

² 1875, s. 68; 1897, ss. 6, 15; 1903, rr. 18, 23, 78, 79, 81, 83-86, ff. 1, 2, 6-12; Fee Order, 1903, and rules. A detailed table of fees payable on entry of first proprietor-

ship (paragraph A of Fee Order) is given in Br. & Shel. (2nd ed.), 514; for a form of application to register settled land, see Br. & Shel. (2nd ed.), 573, Proc. IV.

- ii. Written consents (which may often be part of the application) by persons whose consent is necessary to a sale of the land, by the nominee (if any) of the applicant, and by the unpaid vendor (if any) of the applicant;
- iii. A plan or description enabling the land to be identified on the Ordnance map;
- iv. The amount of the necessary fees appropriate to the transaction;
- v. A statement (if the land is settled land) of the proper restrictions;
- vi. The latest document of title to the land (other than a document of record) which the applicant can produce;
- vii. Either
 - a. A document (which may be a document of record) conferring on the applicant a title under which an application for first registration can be made (*ante*, p. 51); or
 - b. A statutory declaration by the applicant or his solicitor that he is in possession or receipt of the profits.

The applicant will, of course, have to satisfy the registrar as to the genuineness and reliability of his documents of title and statutory declarations,³ and generally as to the propriety and bona fides of the application. Beyond this, no investigation of the applicant's title takes place; the existence of incumbrances need not be disclosed, and any incumbrances which may be stated to exist will not be registered, but an entry of the statement will be made in the charges register; an existing leasehold interest already registered may, however, be entered on the charges register as an incumbrance.⁴ The application is numbered on being received at the registry, so as to indicate the time of its reception—the registration, when complete, relating back to that time; the plans and entries for the register, and also the land certificate, are prepared at the registry, and usually approved of by the applicant, and the registration is then completed; any documents of title lodged with the application are marked with notice of the registration, and, together with the land certificate,⁵ delivered out to the applicant, or, at his option, retained in the registry.⁶ The “relation back” of the registration to the time of application, ensured by r. 22, is particularly important on first registration in a compulsory district; the legal estate—which does not vest in a purchaser until registration—

³ As to statutory declarations, see 1903, r. 327.

⁴ 1875, s. 6; 1903, rr. 19-21, 27, 64. R. 21 purports to state the effect of registration with possessory title, but this is, of course, unnecessary, being already stated in the 1875 Act, s. 8. For a form

of statement of incumbrances, see Br. & Shel. (2nd ed.), 571, Prec. VI.

⁵ 1875, s. 10; 1897, s. 8 (5); 1903, rr. 258, 261.

⁶ 1875, s. 72 (amended by 1897, sched. 1); 1903, rr. 22, 24-26.

can thus be divested from the vendor on the day that the conveyance to the purchaser is executed (*post*, Chap. IV., sec. 1). Where practicable, the value of the land (certified to, if necessary) is to be entered on the register and on the land certificate; this need not be done where first registration takes place on enfranchisement of a copyhold, purchase of a leasehold by the reversioner, etc., in which cases also the registration fees are assessed in accordance with the value of the interest purchased.⁷ A large number of rules relate to the form of the register, plans, and land certificates.⁸

A proper delineation of the land on a filed plan forms an essential part of the proceedings on registration, though the registration may be completed provisionally without a plan (r. 271).⁹ The applicant may either have the boundaries of the land defined accurately, or he may have them indicated generally, and in most cases of registration with possessory title the boundaries will probably not be defined accurately. If it be desired to fix the boundaries precisely, notice must be given to adjoining owners and occupiers (r. 272), which is not always necessary if the boundaries are only indicated generally.

If the land is subject to the jurisdiction of the Middlesex or Yorkshira registries, the registration dates back to the beginning of the day—so as to be prior to any registration in those registries.¹⁰

In the event of the applicant not being beneficially entitled to the land, the entries to be made on the register will form an important feature of the procedure; these entries will include such restrictions and inhibitions as will effectually prevent any improper disposition of the land. A copy of any settlement may be filed in the registry—for reference only, and the registrar must “enter a restriction” protecting any “restraint on alienation” to which the “estate of the first registered proprietor is or may be subject.”¹¹ This restraint on alienation will exist, and be enforced by the proper “restriction,” where applicants are tenants for life, trustees, or corporations sole, etc. (*ante*, pp. 51, 58). Special sections, rules, and forms relate to the framing and entry of restrictions upon the first registration of settled land, charity land, and ecclesiastical benefices.¹² Notwithstanding the limited estate or ownership of such persons as tenants for life, and corporations sole, these limited owners—as well as trustees—become, on registration of the land,

⁷ 1903, rr. 252, 390, f. 70; Fee Order, 1903, rule 5.

⁸ 1903, rr. 2-17, 258, 269-282, f. 66. Examples of registers are given in Br. & Shel. (2nd ed.), 619 *et seq.*

⁹ 1897, s. 14 (2); 1903, rr. 269-282.

¹⁰ 1903, r. 28.

¹¹ 1897, s. 6 (6); 1903, rr. 29, 82.

¹² 1875, ss. 63, 83 (3), amended by 1897, sched. 1; 1897, ss. 6 (2), 15 (1); 1903, rr. 79-81, 83, 84, 224, 225, ff. 6-13. And see 1903, r. 256, f. 36, which seems to furnish an analogy to be followed in cases of first registration of corporations.

registered proprietors or owners in fee simple, with restrictions on their powers of alienation.¹³

When charity land can only be sold—so far as the general law is concerned—with the consent of the Charity Commissioners (or Board of Education, as the case may be), a restriction must be entered accordingly;¹⁴ the question which under the general law is whether the land can be sold and conveyed without that consent, is—with respect to registered land—whether a restriction in Form 13 is to be entered on the register. This question has already been raised in reference to the meaning of “endowment,”¹⁵ and the meaning of “scheme legally established;”¹⁶ but the decision of such cases does not depend on any principle or provision peculiar to the Land Transfer Acts.

Applications for first registration by a county council, who have purchased land under the Small Holdings Act, 1892 (*ante*, p. 68), are also governed by such of the Small Holdings Rules, 1892,¹⁷ as are applicable.

Sched. 2 to the 1897 Act (fees payable on compulsory registration) has been practically superseded by the Fee Order, 1903. The fees payable to the registry will be, for the most part, calculated under paragraph A of the Fee Order. A supplementary statement of incumbrances will necessitate payment of a further fee (para. I). Rules 1-4, 15 and 16, of the Fee Order prescribe the method of paying fees, and state what they cover. By Rule 5 the fees may, when first registration takes place on the enfranchisement of a copyhold, purchase of a leasehold by reversioner, etc., be calculated on the value of the interest last acquired. Statutory declarations made for use in the registry are not chargeable with Inland Revenue stamp duty.¹⁸

All costs of an application for first registration are *prima facie* to be borne by the applicant, but this is subject to the discretion of the registrar; trustees will, under proper circumstances, be allowed their costs of registration; the remuneration of solicitors is also provided for.¹⁹ On the latter point the Remuneration Order, 1882, is in part adopted, including such portions of Part I. of

¹³ 1875, ss. 7, 8, 53, 57, 58, 68; 1897, ss. 6, 15; 1903, rr. 224, 225, 240-242.

¹⁴ 1903, rr. 83-86. For an order made by the Charity Commissioners as to the registration of the Official Trustees of Charity Lands, see Br. & Shel. (2nd ed.), 391.

¹⁵ *In re Church Army*, [1905] W. N. 127; see Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66.

¹⁶ *Attorney-General v. National Hospital*, [1904] 2 Ch. 252; see Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29.

¹⁷ These Rules (including the forms and Fee Order) are printed (together with the Small Holdings Act, 1892) in Br. & Shel. (2nd ed.), 540, 550. Most of the rules, etc., appear to be superseded by the general rules, etc., under the Land Transfer Acts made subsequently, and now embodied in the Rules and Fee Orders of 1903.

¹⁸ 1903, r. 327. A Treasury Order of 1900, under the Public Offices Fees Act, 1879, is printed in Br. & Shel. (2nd ed.), 528.

¹⁹ 1875, ss. 68, 73, 111 (4); 1903, rr. 334-336, sched. 2.

Sched. I. as relate to the negotiation of sales, etc., though otherwise the Remuneration Order (see para. 1) would not apply to transactions with registered land. Unqualified practitioners are expressly forbidden to prepare, for remuneration, certain named instruments relating to registered land, "or any other prescribed instrument;" this appears to include an application for first registration, and draft entries for the register, etc.²⁰

It will be noticed that the foundation of the applicant's title to be registered with possessory title is *either* a document of assurance of the property, *or* a statutory declaration that he is in possession. If an assurance in his favour is produced, the applicant need not commit himself to the positive statement that he has possession in fact. Moreover, the 1897 Act has now repealed s. 2 of the Pretenced Titles Act (32 Hen. 8, c. 9), and has expressly recognized the possibility of registration with possessory title in the face of adverse possession; proceedings to register the land, or rectify the register, might thus be made use of to try the substantial question of ownership.²¹

2. An application for registration with absolute title is made by delivering at the registry the documents, etc., already mentioned in the case of an application for possessory title (*ante*, p. 69), substituting for (v.), (vi.), and (vii.) the following:—²²

v. An abstract of the applicant's title, all deeds and documents of title (including counsel's opinions, requisitions, etc.), and a list of the tenants or occupiers;

vi. Conditions to be annexed to the land (if desired, and if not stated in the application) under s. 84 of the 1875 Act.

vii. Notices (if the land is below high-water mark at ordinary spring tides) required by s. 66 of the 1875 Act.

The applicant's title is then examined in the registry, and advertisements are inserted in the *London Gazette* and other newspapers in order that any objections may be lodged at the registry. The examination of title may be made entirely by the registry officers, or may be referred to conveyancing counsel, or upon the application of any party interested a case may be stated for the opinion of the Court.²³ The standard of goodness of title required is below that of what is generally known as a "safe holding title." S. 17 (4) of the 1875 Act introduces the statutory rule enacted by

²⁰ 1897, s. 10: see s. 44 of the Stamp Act, 1891, on which this section is modelled.

²¹ 1897, ss. 11, 12: see *Marshall v. Robertson*, Sol. J., December 2, 1905, pp. 70, 75. Under the Australian system an applicant is also required to have an "estate in possession," and this has been

held to refer to possession in law only, so that an applicant may test his right to possession in fact as against an adverse occupier: *Hogg's Aust. Torrens Syst.*, 722.

²² 1875, ss. 66, 84 (amended by 1897, sched. 1); 1903, rr. 30-34, 78, 83-86, f. 3.

²³ 1875, ss. 6, 17, 74-77; 1903, rr. 36-40, 313-315, 337, 341, f. 4.

s. 2 of the Vendor and Purchaser Act, 1874, but goes further by making recitals in documents, in effect, conclusive—not merely *prima facie* evidence of the matters recited. As a result of this, land once registered with absolute title might be freed from burdens created within forty years, but prior to the actual date from which investigation of the title commenced, although, but for the registration, the land would have remained subject to the burden.²⁴ Rule 36 gives the registrar a wide discretion as to accepting a title which has recently been investigated, or as to which there is only a presumption that it has recently been investigated by reason of the land having been sold under an order of Court, or having been on the register with possessory or qualified title for six years after being placed there by a purchaser on sale. During the currency of the advertisements any person may, by notice in writing, object to the registration of the land; the notice must state the grounds of the objection, and the name and address of the objector; notice is thereupon given to the applicant and it rests with him to have the matter brought before the registrar, who will hear both parties and give his decision on the objection; until the objection is withdrawn, or disposed of, the land cannot be registered with absolute title.²⁵ The sections and rules cited lay down the procedure on appeals to the Court, and on references by the registrar to the Court; no rules appear to have been made authorizing an appeal to a County Court. In case of any change of interest pending an application for registration, the proceedings may be continued by any person entitled to apply for registration; the proceedings must be prosecuted by the applicant without undue delay, or they will be treated as abandoned, and the objections to the registration would then prevail.²⁶ It appears to be unnecessary for the objector to take any active step to bring the matter to an issue. If his objection is in the nature of a claim to the ownership of the land, on the ground that the applicant is neither entitled to the land, nor entitled to make the application for registration, the mere filing of his formal objection would be sufficient; if, however, he only claims some interest in the land which is not inconsistent with the registration of the applicant as proprietor, he will probably be sufficiently protected by having a caution or other entry made on the register protecting his rights as against the applicant when registered proprietor; if the land has already been registered with possessory or qualified title, he may lodge a caution against registration

²⁴ See *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. 391, which appears to be inconsistent with *Bolton v. London School Board* (1878), 7 Ch. D. 766. The latter decision, however, has been the subject of a great deal of unfavourable criticism by

text writers: see 1 Prid. (19th ed.), 115; 1 Dart. V. & P. (7th ed.), 162; 1 Wms. V. & P. 109.

²⁵ 1875, ss. 17, 74–77, 114–117; 1903, rr. 41–44, 296–312, f. 69.

²⁶ 1903, rr. 316, 328.

with qualified or absolute title.²⁷ The contest (if any) will then be as to the existence and nature of his rights, and the proper entries to be made in respect of them. In the event of any claim by an objector to the whole land, or a substantial interest in it, being seriously disputed by the applicant, it is extremely improbable that the parties would rest satisfied with the registrar's decision. By r. 300, where an application is made to the Court, "facts in dispute" are to "be proved by evidence as the Court shall direct," and the proceedings might, it is presumed, take the form of an ordinary action, the applicant's application and the objector's objections (embodied in the registrar's statement) taking the place of pleadings, and the Court might either settle an issue and direct it to be tried—on the analogy of 1875, s. 74—or give leave to one of the parties to commence an action. The procedure by summons directed by rr. 301 and 302 is analogous to procedure by ordinary originating summons. Since the applicant is not obliged to allege in his application that he is in possession of the property, the whole question of the title of the person in possession might be raised and decided on an application for registration with absolute title as well as where registration with possessory title only is applied for (*ante*, p. 73).

The provision with respect to a caution being lodged against entry of land on the register for the first time is contained in s. 60 of the 1875 Act. The analogous provision, as to cautions against a possessory title being registered as absolute, is contained in 1903, r. 226, a rule which was made under the authority of s. 22 of the 1897 Act. Though this rule only impliedly authorizes a caution against registration with absolute title, it seems sufficient for the purpose; but the provision is placed among the rules which have to do with cautions against dealings under s. 53 of the 1875 Act, which section differs from the enactment (s. 60) relating to cautions against first entry of land on the register. The proper inference to be drawn from the collocation of r. 226 seems to be that, as regards the nature of the interest which will justify a caution being lodged against possessory registration being made qualified or absolute, s. 53 must be consulted; whilst, as regards the interest which will support a caution against first entry of any kind on the register, s. 60 is the only enactment to be looked to. It will be convenient to consider the question of cautions under s. 60 first, and then those under s. 53 and r. 226.

To be entitled to lodge a caution under s. 60 against the first entry of land on the register, the cautioner must be a "person having or claiming such an interest as entitles him to object to any disposition thereof being made without his consent." The word

²⁷ 1875, ss. 18, 60–64; 1897, s. 22 (6) (c); 1903, rr. 43, 88–94, 215, 226, ff. 14–17, 59.

"disposition" is elsewhere in the Acts and Rules confined to dispositions made after the land has been registered, and nearly always refers to registered dispositions;"²⁸ *primâ facie*, it might, in its present collocation, be taken to mean any disposition made under the ordinary law before registration of the land. But if this meaning be given to the word, a considerable number of cases will be excluded from the protection afforded by a caution, and on the whole it seems more probable that the word "disposition" is here used, as elsewhere in the Acts and Rules, to mean—or at any rate to include—dispositions made after the land is registered. The question, whether ordinary transactions with land before it is registered are or are not included in the word, is possibly of some practical importance. The prescribed form of statutory declaration (1903, f. 15), which suggests certain interests in land as sufficient to support a caution, throws no light on the question, since it is framed with reference to cautions under s. 53 as well as under s. 60. Such an interest as that of a purchaser under an uncompleted contract for sale would entitle the purchaser to "object to any disposition" of the land, whether "disposition" be used in the narrow or in the wide sense;²⁹ but the interest of a legal mortgagee would not entitle the mortgagee to "object to any disposition" of the land, if "disposition" is taken in its wide sense, as meaning a disposition before registration, for it is obvious that the mere existence of the mortgage does not, under the general law, require the mortgagee's consent to every transaction with the land. On the other hand, such a mortgagee would be entitled "to object to any disposition" of the land by a person who became registered proprietor on the strength of an equity of redemption only. Such considerations as these may perhaps be some argument for construing "disposition" in s. 60 in the narrower sense of disposition after the land is registered. The test to be applied—*i.e.* the right "to object to any disposition"—will, literally, cover the case of every landowner in England and Wales being entitled to lodge a caution against his own land being registered. But it is presumed that some reasonable ground for supposing that an application for registration may be made would have to be shown. The enactment appears to be intended to meet, amongst others, the case of an owner whose adjoining neighbour proposes to register his own land and thus

²⁸ See, for instance, 1875, s. 98; 1903, heading to r. 97, rr. 102, 104, 106, 152, 176, 177; Fee Order, 1903, r. 6.

²⁹ I am unable to find any English case which is an exact authority for this proposition; the nearest statement of the principle seems to be in *Haynes v. Haynes* (1861), 1 Dr. & Sm. at 450, quoted in

Mercer v. Liverpool Ry., [1903] 1 K. B. at 661. It has, however, been decided in Australia that a vendor of freehold land has no right, as against the vendee, to re-sell the land, even if he provides by the new contract that the re-sale is subject to the rights of the original purchaser: *Ros v. Robinson* (1886), 12 V. L. R. 764, 769.

possibly bring up a question of disputed boundaries. And although s. 60, having been enacted before registration was made compulsory, could not be said to contemplate the increased risk of unregistered transactions in a compulsory district, yet the position of a purchaser, lessee, or mortgagee, of unregistered land in a compulsory district, will usually answer the test, laid down in s. 60, of a right to lodge a caution against first registration of land; a mortgagee will often stipulate for the right to lodge a caution.

The meaning of r. 226 of the 1903 Rules, as to cautions "against the registration of a possessory or good leasehold or qualified title as good leasehold or qualified or absolute," taken with the other rules and forms (rr. 227-233, f. 59), and s. 53 of the 1875 Act, seems to be that any person, having a sufficient interest—to be referred to presently—in land registered with any title but an absolute title, may lodge a caution against the land being registered with a better title; the procedure is to be adapted to the procedure relating to cautions against dealings. The nature of the interest which entitles such a caution to be lodged is described in wide terms: "any person, interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever" in land registered in the name of another person, may lodge the caution. The mention of the specific cases of "unregistered instrument" and "judgment creditor" can hardly fail to have the effect of controlling the generality of the words "or otherwise howsoever."³⁰ What appears to be intended is that the cautioner must be "interested" by virtue of some distinct adverse document or some distinct adverse interest by way of charge or incumbrance, excluding such interests as that of a beneficiary entitled to the proceeds of sale, etc.

When all requisitions and objections have been disposed of, the proper entries for the register are prepared, a statutory declaration is made as to all documents of title and material facts having been disclosed, the documents of title are marked with notice of the registration, and the completion of the register relating to the title together with the land certificate are the final steps in the registration of the land and of the applicant as proprietor; all necessary incumbrances, restrictions, etc., are entered in the proper part of the register.³¹ S. 70 of the 1875 Act requires a declaration or affidavit to be made as to disclosure of documents and material facts, and r. 47 prescribes the form of declaration; the prescribed form (f. 5), however, goes beyond what is authorized by the Act, for it includes a statement as to the possession or receipt of the profits, and to that extent appears to be *ultra vires*.

³⁰ See *In re Stockport Ragged Schools*, [1898] 2 Ch. at 696, 699; *Lambourne v.*

McLellan, [1903] 2 Ch. at 275, 276.

³¹ 1875, ss. 70, 72; 1903, rr. 44-47, f. 5.

The title of the applicant may be such as to justify the registrar in declining to register the title as absolute at once, and in that case he may file a note to the effect that the title will be absolute at the expiration of a certain period, or the occurrence of a particular event; on the other hand, if the title is considered to be established only for a limited period, or subject to certain reservations, appropriate entries may be made on the register, and the title will be registered as "qualified."³² Nothing is said as to priority of registration being secured by priority of application, as in the case of applications for possessory title, though priority could of course be secured by applying for a possessory title first, and afterwards for an absolute title. Provision is made for a "priority notice" being lodged by an intending applicant, which will ensure any application lodged within fourteen days afterwards being "dealt with in priority to any other application,"³³ but this does not appear to make the registration relate back to the time of application or of lodging the priority notice.

The provisions as to the value of the land being entered on the register, and as to restrictions in the case of settled land, and land vested in fiduciary owners, etc., differ little in the case of applications for absolute title, and have already been referred to in connexion with possessory title (*ante*, p. 71).³⁴ Notwithstanding that the title is registered as absolute, the proprietor need not have his boundaries precisely defined, and in that case the exact line of the boundary will be left undetermined (*ante*, p. 71).

The subject of the fees payable on first registration, and the costs of the proceedings, are also referred to, *ante*, p. 72.³⁵ By rules 7 and 10 of the Fee Order, 1903, payment of part of the fees may be deferred or abated where an absolute title is applied for after an application has been made for registration with possessory title.

II. The procedure with respect to registering leasehold land, as prescribed by the 1875 Act, has been completely changed by the 1897 Act and Rules made thereunder, and now follows the analogy of freehold land as far as possible.³⁶ Application may be made to register leasehold land with: (1) Possessory title; (2) Good leasehold title; (3) Absolute title.

1. An application for registration of leasehold land with possessory title is made in the same way as a similar application relating to freehold land (*ante*, p. 69). The lease itself, a copy, an abstract, or "other sufficient evidence" of its contents, must be delivered with the application (r. 51); rr. 60-66 contain other provisions relating to

³² 1875, s. 9; 1903, rr. 48, 49.

³³ 1903, r. 95, f. 18.

³⁴ See notes 7, 8, 11, 12, 13, and 14.

³⁵ See notes 15, 16, and 17, and para.

E. of the Fee Order, 1903.

³⁶ 1875, ss. 10-16; 1897, ss. 8 (5) (i.), 22 (6) (b); 1903, rr. 1 (4), 50-67.

leasehold land and made necessary by the difference between freehold and leasehold. R. 66, making a lease and a reversionary lease one continuous term, is noticed, *ante*, p. 53.

A land certificate is now issued in respect of leasehold, as well as of freehold, land (rr. 1 (4), 65), replacing the "office copy of the registered lease" prescribed by s. 16 of the 1875 Act.

Para. C of the Fee Order, 1903, will govern the fees payable.

2. The 1875 Act did not enable leasehold land to be registered with possessory title at all, and what is now called "good leasehold title" would have been in effect, under the 1875 Act, a kind of qualified title, *i.e.* a title "without a declaration of the lessor's title."³⁷ A "good leasehold title" is a title—absolute or qualified—to the leasehold interest on the footing of the lessor having a good title to grant the lease, but the validity of the lease is only warranted as against the lessor, and to the extent of its being a good lease in respect of the lessor's execution, etc., of it; any rights of other persons, in derogation of the lessor's title to grant the lease, are expressly excepted from the effect of registration.³⁸ Most of the provisions referred to above in connexion with applications for registration with possessory title apply also to registration with good leasehold title. As in the case of freehold land, registration with "qualified" title may be effected as the result of an application for a good leasehold title. The form of application, and proceedings thereon, will also be modelled on the application and proceedings relating to freehold land where an absolute title is required (*ante*, p. 78).

3. Applications to be registered with absolute title to the leasehold land correspond still more closely than do applications for good leasehold title with applications for absolute title to freehold land, and need not be further referred to here. Under the 1875 Act the registered title was only equal to a "good leasehold title," unless accompanied by a declaration of the lessor's title to grant the lease. Under the present procedure registration with "absolute title" to leasehold land warrants the leasehold interest as completely—*i.e.* so far as the leasehold interest goes—as similar registration of freehold land.³⁹

III. The special classes of land, other than ordinary freehold and leasehold land already dealt with, consist of hereditaments corporeal and incorporeal; applications for their registration are to be made

³⁷ 1875, ss. 12-16, now (except s. 13) repealed. The word "repealed" is perhaps not technically correct; by the 1898 Rules (r. 57), made under the authority of 1897, s. 22 (6) (b), these sections were "deemed to have been omitted" from the

Act, and the 1903 Rules (r. 67) repeats this verbatim.

³⁸ 1903, rr. 52-54, 56, 58, 59.

³⁹ 1875, s. 13; 1903, r. 55. And for other provisions see above as to "possessory" and "good leasehold" titles, etc.

and proceeded with as in the cases already dealt with, subject to necessary modifications (r. 71).⁴⁰

The corporeal hereditaments expressly mentioned are: mines and minerals severed from the land; cellars, flats, and "other similar hereditaments;" undivided shares in land.

S. 18 of the 1875 Act confers power on the registrar to register the proprietorship of the mines and minerals, whenever the right to them is proved, without an independent application for first registration being made. No similar provision is made with respect to any other spatial area.

The incorporeal hereditaments expressly mentioned are: manors; advowsons; rents; tithes.

Rr. 72-77 contain special provisions relating to all these special classes, and some remarks on them are made (*ante*, p. 55).

Nothing seems to be said in the Acts or Rules as to the precise time at which registration of the land is effected, except that—in the case of possessory title only—the registration is to be completed "as of the day on which" the application is delivered at the registry (*ante*, pp. 70, 78). The ministerial act of registration consists in copying into a volume of the "register" or register-book official statements with respect to the property concerned. These statements are called "entries," and the process of copying them into the permanent volume is called "entering" the property, or matters relating to the property, in or on "the register." The usual practice is for a proprietor, or his solicitor, to obtain from the registry office blank printed forms of "draft entries" and fill these in with the statements which it is desired shall appear on the register; these are submitted to the registrar, and, if altered by him, again submitted to the proprietor's or applicant's solicitor, and so on until the proprietor and the registry officers agree. When finally signed by the proprietor or his solicitor as "approved," and accepted by the registrar, they represent in draft the actual entries made on the register. Presumably the final official act, in order to make the registration complete, would be to mark on the "draft entries," and then in the register, the proper number of the "title" or property which has been entered, and this might well be taken to be the time of registration; the Australian system furnishes an analogy for this.⁴¹

The method of keeping the register is prescribed in rr. 2-17 of the 1903 Rules, but is not completely intelligible without either some practical acquaintance with the Land Registry Office, its forms and procedure, or some further explanation of the rules

⁴⁰ 1875, s. 82; 1897, s. 14 (1) repealing 1875, s. 83 (2); 1903, rr. 71-77.

⁴¹ See South Australian Real Property

Act, 1886, s. 50. There are corresponding enactments in other Australian Statutes: Hogg's Aust. Torrens Syst., 896, note 46.

themselves. The principal reason for this is that in the Rules each of the words "register" and "title" is used in more than one sense, and they are also used in senses in which they are not used in the Acts.

In the Acts⁴² "the register" means the whole of the apparatus of manuscript books, or sheets of paper intended to be bound into books, kept at the registry and devoted solely to the entry therein or thereon of official statements with respect to the rights of persons interested in land which is registered. The scheme of the Acts is to leave the exact method of keeping the "register" to be prescribed by rules, and the exact meaning of the word "register" in the Acts cannot therefore be more precisely stated than as above. In the Rules of 1875 no precise form in which the register should be kept was prescribed, this being first done by the Rules of 1898. The Land Registry Act, 1862, however, did (s. 14) provide for three separate "books" to be kept which were to contain respectively the register of estates, the record of title, and the register of mortgages. The 1903 Rules—following exactly the 1898 Rules—provide that "the register" is to "consist of three portions, called the property register, the proprietorship register, and the charges register," whilst charges and other incumbrances "may" (r. 8) be entered in a "separate book." *Primâ facie* this seems to mean that "the register" is to be kept in much the same way as was directed by the Act of 1862, *i.e.* in three sets of volumes—each set being separate and distinct from the other two,—and this appears to have been the arrangement of the register which was present in the minds of Collins, M.R., and Cozens-Hardy, L.J., when summarizing the provisions of the Acts and Rules.⁴³ As a matter of fact, the register is not kept in this way. The property register, the proprietorship register, and the charges register, are simply divisions of the same "title" or "register"—meaning by these words the particular pages of "the register" which are exclusively used for entries relating to one particular piece of land (*ante*, p. 71, note 8). A "register" of one piece of land may thus consist of one page (though it usually consists of not less than three pages, and may, of course, consist of many more) in "the register," the divisions being indicated thus: A. Property register; B. Proprietorship register; C. Charges register. The word "register," as applied to a few pages of "the register," is not so used in the Acts, though it is so used in the Rules.⁴⁴ In the heading to s. 5 of the 1875 Act "register of title"

⁴² For instance: 1875, ss. 100, 111; 1897, ss. 7, 17.

⁴³ *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. at 650, 655. And see 1903, r. 285, which seems to treat the "property

register" as kept distinct from other parts of the register.

⁴⁴ Instances: 1903, rr. 11, 288. But see 1875, s. 104, where perhaps "any register" has this meaning.

occurs, and s. 11 directs "a separate register" of leasehold land to be kept. No separate general register of leasehold land is kept, though freehold and leasehold land are not entered in the same "register" or "title."

The particular pages of "the register"—which constitute, as it were, a unit, relate to one property, and are comprised under one number—are also called a "title"; each "title" bears a distinguishing number. This use of the word "title" is not found in the Acts but in the Rules only.⁴⁵ The land certificate is simply a copy of this "title" or "register," and of the filed plan, prefixed by a statement under the official seal of the Land Registry certifying that the land is registered.⁴⁶

"The register" is thus—instead of, as might be supposed from the wording of the Rules, and the language of the judgments in *Capital and Counties Bank v. Rhodes*, being in three separate divisions—divided into, or rather composed of, a number of "registers," each of which "registers" represents either (a) one piece of property, or one set of pieces of property, or (b) one proprietor's or group of proprietors' interest or interests. It would be convenient if some such expressions as "general register" or "register-book" were to be used to denote "the register," and "particular register" to denote the different "registers" or "titles" composing the whole.

When the land is once registered, the register (so far as it relates to that land) can only be inspected by persons interested in the land, or by leave of the registrar.⁴⁷ The register, and not the title-deeds, is thenceforth the proper evidence of title, and this seems to be so notwithstanding the special enactment, in s. 8 (6) of the 1897 Act, making a deposit of the land or charge certificate by way of security efficacious to create a lien on the property. The land or charge certificate is, in fact, merely an officially attested copy of the evidence of title at the registry, and the impossibility of removing that evidence from the jurisdiction of the English Courts may make a considerable difference in the nature and locality of the specialty debt created by a registered charge.⁴⁸

One leading principle on which the register is constructed should be borne in mind. The register is primarily a register of the land itself; the entry of the names of proprietors, the quantity of their

⁴⁵ Instances: 1903, rr. 2, 3, 16, 77, 116, 127, 220, 285.

⁴⁶ 1903, r. 258, f. 66.

⁴⁷ 1875, s. 104; 1897, s. 22 (7); 1903, rr. 284, 285. In r. 285 "property register" is mentioned, but in order that this division only of a register should be inspected, it might be necessary to seal up the remaining divisions.

⁴⁸ See the Australian case of *Ivey v. Commissioners of Taxation* (1903), 3 S. R. (N. S. W.) 184, which applies to the English Acts a fortiori, since the "certificate of title" is treated, in the Australian system, as more nearly analogous to a title deed than is the land certificate under the Land Transfer Acts.

ownership, and the incumbrances to which the land is subject, are necessary and incidental features, the chief and most prominent feature being the entry of the property. A particular illustration of this is afforded by r. 2, which provides for the "title to each registered property" bearing "a distinguishing number;" the "titles" or separate registers are treated as distinct and separate in respect of their relating to separate "properties," rather than to separate "proprietors."

When once the land is registered in a compulsory district, it cannot be removed from the register, since no provision is made for this, whilst express provision is made with respect to land outside compulsory districts; in a non-compulsory district, land may be removed from the register by the proprietor with the consent of the other persons "appearing by the register to be interested" in the land.⁴⁹ The words of s. 17 are—"not *situated in a district* where the registration of title is compulsory;" it would seem, therefore, that even interests, which are excepted, by s. 24 of the 1897 Act, from the compulsory registration provisions, cannot be removed from the register if they are situated in a compulsory district, and have once been placed on the register. The mere notification on the charges register of an interest as an incumbrance could hardly be called "registration" of the interest; actual entry of the proprietor of the incumbrance, either in a separate register of his own, or in the property register of other land, would seem to be essential. Thus, it is conceived that in a case where the owner of land excluding the mines, in a compulsory district, was registered as proprietor of the land, the mines being expressly mentioned as vested in another person, the mines could not be said to be registered, and so could be dealt with altogether off the register. The right of the mines owner would apparently be the same, even if the mines were not mentioned, subject to his possibly losing his right as against a purchaser under s. 30. But if the land owner had the mines vested in him at the time of his first registration, it is conceived that he could not afterwards claim that the mines were not registered, and could not remove them from the register in a compulsory district. Under s. 49, as amended, the mines may be severed and dealt with by an unregistered assurance, but the collocation of the enactment authorizing this seems to imply that the right to the mines would have to be protected by an entry on the register, and the necessity for such an entry is inconsistent with the mines being unregistered or removed from the register.

⁴⁹ 1897, s. 17; *In re Winter* (1873), 15 L. R. Eq. 156 (under s. 34 of the Land Registry Act, 1862). And see Br. & Shel. (2nd ed.), 335, as to the practice of the

registry in not requiring consent of a lessee, even where notice of his lease is registered.

Similar considerations will, *mutatis mutandis*, apply to the case of easements, though it is less probable that the easement would be separately dealt with.

Where removal from the register is possible, the owner of the land or interest in question will be ill-advised to remove it unless he is certain of getting the technical legal estate vested in himself. If the land has been registered on the strength of an equitable title only, or has passed through several hands since first registration, the exact nature of the owner's title after the land has been removed may be a matter of some difficulty to determine. In the only reported case⁵⁰ of removal from the register—and that was under the 1862 Act—the owner undoubtedly had the technical legal estate, having taken a conveyance from a mortgagee in whom the legal estate had been left outstanding.

Land removed from the register, which would otherwise be subject to the Middlesex and Yorkshire registries, is again subject to these registries.⁵¹ And "land" here appears to include any interest in land.

In cases where the general principles on which the register is to be kept are not illustrated by any of the above considerations, it may be important to discover a working analogy in another branch of property law where registration is part of the assurance of the property on the register, and not merely an added ceremonial. There are two analogies which are obviously available, the copyhold court rolls or registers, and stock and share registers. Each of these afford illustrations of principles applicable to the Land registry. If, however, one of these is to be selected as showing in general the closest approximation to the Land registry, then certainly the stock and share registers should be selected. The chief point of resemblance between the copyhold registers and the Land registry is the part played by the admittance as completing the surrender. Registration, however, in the case of a stock register, plays the same part, and in addition to this, what is one of the essential and most important features of the Land registry finds a place in the system by which registration of stocks and shares operates—the warranty of title and indemnity. Under each system the title of existing owners on the register is warranted, and also the title of persons who by no fault of their own are in fact wrongly placed on the register. It has now been decided that, with respect to a stock register, the person who tenders for registration an instrument which is in fact a forgery warrants the genuineness of the instrument, and must therefore bear the loss which may result from the registration

⁵⁰ *In re Winter, supra.*

⁵¹ 1875, s. 127 (amended by 1897, sched. 1); 1897, s. 17 (3).

of the forged instrument.⁵² This has not yet been held to be the law with respect to the Land registry,⁵³ but if it is eventually decided to be so, the analogy between stock registers and the Land registry will be strikingly complete. In addition to this general resemblance, one of the 1903 Rules (r. 118) is obviously borrowed from the practice of the Bank of England on registering transfers of stock. And it is not unimportant that the general model for a register, taken by the Commissioners who framed the Reports of 1857 and 1870, was a stock register (*ante*, pp. 8, 14).

⁵² *Sheffield Corpn. v. Barclay*, [1905] A. C. 392. Exactly the same principle applies under the Australian Torrens system: *Gibbs v. Messer*, [1891] A. C. 248.

⁵³ The contrary has, in effect, been decided by Kekewich, J., in *Attorney-General v. Odell*. This case is, however, under appeal, and, seeing that the House of Lords in *Sheffield Corpn. v. Barclay* reversed the unanimous decision of the Court of Appeal since the decision in *Attorney-General v. Odell*, the Court of

Appeal, when *Attorney-General v. Odell* is heard, will have before it authorities and arguments which were not addressed to the Court of first instance. Stock and share registers, and the Acts relating to them, have on several occasions been referred to in the Courts as analogous to the Land Registry and Land Transfer Acts: see *Bradford Banking Co. v. Briggs* (1888), 12 A. C. at 32; *In re Pawley and London, etc., Bank*, [1900] 1 Ch. at 61.

CHAPTER III.

ESTATES, INTERESTS, AND RIGHTS IN REGISTERED LAND.

SEC. 1.—Registered estates and interests.

SEC. 2.—Estates and interests protected by registered notice.

SEC. 3.—Estates and interests protected by restraints on alienation.

SEC. 4.—Estates, interests, and rights unprotected by any special entry.

SECTION 1.—REGISTERED ESTATES AND INTERESTS.

SUB-SEC. 1.—The general nature of the registered estate in land.

SUB-SEC. 2.—The general nature of the registered charge on land.

SUB-SEC. 3.—Classification of registered estates and interests.

SUB-SEC. 1.—*The General Nature of the Registered Estate in Land.*

THE question, what is the exact nature of a registered estate or interest, is perhaps more difficult to answer than any other question relating to a "measure so novel in its character, so difficult in detail"—as the plan recommended by the Report of 1857 is called (*ante*, p. 11). An inseparable part of the answer to the question, as regards the registered estate or proprietorship of the land, is some account of the relation which the legal estate of ordinary law bears to the registered estate, and of the difference which the creation of the registered estate has made to the value of the legal estate in the scale of land rights. That the registered estate is not the ordinary legal estate is clear, from the fact that an equitable owner, a tenant for life, or even the donee of a power, can by registration have conferred on him an "estate in fee simple," or "possession" of land for a "leasehold estate."¹

It has, indeed, been suggested that, with respect to the statutory fee simple, which is *primâ facie* conferred on a tenant for life by the 1875 Act, the 1897 Act has made a change in the scheme of the system;² but, notwithstanding the difficulties created by the language of the 1897 Act, these do not seem to be sufficient to override the clearly expressed enactments in the 1875 Act as to the

¹ 1875, ss. 7, 13; 1897, s. 6.

² Cherry and Marigold's Land Transfer Acts, 167. The special difficulty caused by the wording of s. 6 (8) of the 1897 Act as to the estate of a tenant for life is

discussed subsequently in sec. 3 and Chap. IV. sec. 2, sub-sec. 3, under the heads of protected estates and settlements.

effect of the registration of any person as a proprietor of freehold land. The conception of a registered proprietor of the fee simple who is only a tenant for life is not, in fact, any more novel than the conception of the corporation sole, which appears on the whole to be the nearest analogy.

Whilst this is an important and difficult question with respect to the proper theory of the system to be adopted, it is equally important and difficult with respect to the practical ascertainment of the rights of owners. The importance of the question is due to the fact that in the majority of cases first registration is effected with possessory title only. And it is precisely in cases of registration with possessory title that the difficulty exists of defining the rights of a person who has the legal estate in the land; where the registration is with absolute title, the theoretical difficulty is no doubt the same, but the practical occasions for solving it do not so often arise, and the question is therefore relatively of less importance. Whether the registered title be possessory or absolute, the statutory rights conferred by registration are the same in kind—though different in degree—and the theoretical relation between the registered estate and the legal estate is the same in kind.

The nature and incidents of the registered estate cannot be directly defined, or described in any satisfactory manner, otherwise than by comparing the rights conferred by registered ownership with rights conferred by the ordinary legal estate, and noticing in what respects rights of the one kind differ from rights of the other kind. To this end it will first be necessary to make some observations on the nature of the legal estate, and the rights conferred by it in ordinary law.

The expression "legal estate" has long been stamped with a technical meaning, which is well understood but difficult to define concisely. Any use of it to denote the statutory estate conferred by registration under the Land Transfer Acts would lead to very great confusion, and such use is in this book carefully avoided.³ "Legal estate" is not identical in meaning with "legal interest" or "legal right," though the latter expressions are occasionally used to mean "legal estate." "Legal estate" is sometimes used in distinction to "equitable estate," to "incumbrance," and to "power." Formerly, the "legal estate" meant the most complete rights of ownership which could be held in property. At the present day the legal estate is only one set of rights of property, and that not always

³ In *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. at 650, the expression "legal estate," in the judgment of Collins M.R., seems to refer to the statutory registered proprietorship. In that case, however, the registered proprietor had

the ordinary legal estate vested in him. In some recent text-books there is also an occasional confusion between the legal estate and the registered estate: see, for instance, 8 *Encycl. Forms*, 523, note.

the most efficacious; there may be said to be four kinds of rights in property which may be more efficacious than the legal estate in conferring rights of enjoyment or alienation: (1) The right conferred by a registered assurance; (2) The equitable estate; (3) An overriding power of appointment; (4) Rights acquired by long possession under Limitation Acts.

1. So far as land is concerned, the principal examples in England of a conveyance of the legal estate being inferior, in value or validity, to a registered assurance are to be found in cases of priority by registration under the Middlesex and Yorkshire Registry Acts; the Irish Registry Acts also give priority to registered over unregistered assurances, though on a somewhat different principle. No name has been found, or even suggested, for what is really a sort of supra-legal estate conferred, in effect, by a registered assurance which takes priority of an unregistered, or subsequently-registered, conveyance of the legal estate. The practical result of priority being gained, by the registration of one assurance, over another assurance which purports to pass the legal estate, is that the latter does *not* pass the legal estate as it would have been formerly understood; in other words, the legal estate has lost one step or degree in value.

2. A striking illustration of the loss by the legal estate of its former superiority, in point of value, to the equitable estate, is afforded by the fact that at the present day a purchaser may get a good title, though he does not get the legal estate.⁴ The concurrent administration of law and equity under the Judicature Acts has largely contributed to this, even though the technical distinction between the legal and the equitable estate has not been abrogated.⁵ Where a purchaser obtains a good holding title by receiving a conveyance of the complete equitable estate, the legal estate being left outstanding, the legal estate is placed in a position of inferiority, for all purposes of enjoyment of rights of property in the land, to the equitable estate.

3. Where the legal estate is liable to be displaced by an overriding power vested in another person, under the Statute of Uses, the Settled Land Acts, or otherwise, the person who has the legal estate is, for many practical purposes, in the position of one who has only the equitable estate; he has not that title against all the world which the possession of the legal estate confers, but is to some extent at the mercy of the donee of the power, and dependent for complete security upon the good faith of the latter—much as a merely equitable owner is dependent on the person who has the legal estate.⁶ On

⁴ *In re Williams and Parry's Cont.* (1895), 13 Reports 574, 579, 582; 72 L. T. 869.

⁵ *In re Williams and Parry's Cont.*,

supra, at 582; *In re Scott and Alcares' Cont.*, [1895] 2 Ch. at 614; *Manchester Brewery v. Coombs*, [1901] 2 Ch. at 617.

⁶ This is well pointed out in the

the exercise by the donee of his power, the legal estate at once passes from the person in whom it is vested, and becomes vested in the appointee. So far as the right of alienation is concerned, the legal estate is a right, in this instance, of inferior value to the overriding power.

4. The nature of the title, acquired by a person who is entitled to possession of land under the Limitation Acts against the person who has the legal estate, is anomalous. There is, in fact, no name appropriated to the ownership or estate of a person who holds by virtue of an antecedent possession for a given period. Although he is sometimes referred to as having acquired the legal estate,⁷ yet the effect of the Limitation Acts is not to transfer to the quondam intruder the estate of the former owner, but to confer on the intruder a new estate, overriding and abrogating the rights formerly enjoyed by virtue of the former owner's legal estate.⁸ That legal estate thus disappears for every practical purpose, whether of enjoyment or alienation.

In those of the above four cases in which the legal estate is not transferred—i.e. in all except the case of an overriding power—the person whose title becomes paramount to the legal estate then left outstanding has a “legal title” or “legal interest,” and becomes “legal owner,” in the sense that his rights of property are good against the world and are secured to him by the law of the land.⁹

Whilst in modern jurisprudence the legal estate has thus been diminished in relative value, the equitable estate has increased both in relative and positive value. It has increased relatively by the corresponding decrease, above referred to, with respect to the legal estate. But it has also increased positively by being now regarded as an actual estate inhering in the land, and not depending for its validity altogether on the doctrines of contract and notice.¹⁰ The distinction between the equitable and the legal estate at the present day is, in fact, merely technical, the Court in its equitable jurisdiction being “accustomed to regard an estate in land in the same way whether it is equitable or legal.”¹¹ Moreover, the

evidence of Mr. Robert Wilson before the Registration and Conveyancing Commission: Report of 1850, Appendix, p. 490.

⁷ See, for instance, *In re Williams and Parry's Cont.* (1895), 13 Reports at 579; 72 L. T. 869.

⁸ *Tichborne v. Weir* (1892), 4 Reports 26, 67 L. T. 735; *Warren v. Murray*, [1894] 2 Q. B. at 651; *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. at 399.

⁹ As to rights conferred or allowed by equity jurisprudence being strictly “legal” rights, see *Warren v. Murray*, *supra*; *Midland Ry. Co. v. Taylor* (1862), 8 H. L. C. 751. And as to rights conferred by statute being “legal” rights, see *Mercer v. Liverpool Ry.*, [1903] 1 K. B. at 662,

663, affirmed [1904] A. C. 461.

¹⁰ See *Rogers v. Hosegood*, [1900] 2 Ch. 388, 405, 407; *Driscoll v. Battersea*, [1903] 1 K. B. at 887; *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. 391, 398. With these statements of the law relating to the equitable estate compare the remarks of Mr. Hayes in 1830, as to equitable estates being incorrectly “treated as estates in the land, conveyed as such by formal assurances:” Report of 1830, Appendix, p. 364.

¹¹ *In re Somerville and Turner's Cont.*, [1903] 2 Ch. at 583. And see *In re Ashforth*, [1905] 1 Ch. 535, 546, as to assimilation of rules relating to legal and equitable estates.

legislature has in some cases directly turned equitable rights into legal rights, as by means of the Married Women's Property Acts, and in other cases has indirectly raised equitable rights to the level, for practical purposes, of legal rights, as by means of the Judicature Acts.

One difficulty, already noticed, which has to be met in assigning their proper places in the scale of ownership rights to estates and rights which are not strictly either legal or equitable, relates to their nomenclature; indeed, the same difficulty really exists as to legal and equitable estates themselves, seeing that the entities denoted by the names have changed. The names, given to registered estates and interests in registered land, are the same names as are already affixed to estates and interests in ordinary land not yet registered—with one important difference. "Fee simple," "term of years," "freehold land," "lease," "charge," etc., all occur in the Acts and Rules. The difference is that the expressions "legal estate" and "equitable estate" are not applied in the Acts or Rules to interests in registered land, and are only used with reference to interests in land before it comes on the register. It is clear (*ante*, p. 86) that the registered estate is not the ordinary legal estate; it is equally clear that it is not the ordinary equitable estate, for it does not depend for its support in any way on another estate, and consequently is not liable to destruction from the loss of that support. Put in the most general words, the registered estate is a group of statutory rights which are new, in the sense that they do not exactly correspond in their juridical theory with rights in property as known to the ordinary law, though designed to preserve and confer the same or analogous rights in their practical result.¹² The Acts have conferred on a registered proprietor of land what may be called a statutory estate, which is not a merely legal right, but a right both legal and equitable, which Courts both of law and equity must recognize;¹³ the interest conferred is, indeed, expressly called an "estate," and consists of rights as nearly as possible resembling the rights of persons who have what is ordinarily called an "estate" in the land, but the new registered, or statutory, estate does not operate in the same manner, or on the same principles, as the ordinary "estate." Much in the same way the Settled Land Acts confer on a tenant for life of settled land what is called a "power"; but the new right created by the Statute does not operate in the same manner, or on the same principles, as an ordinary "power." These statutory rights can only be described in terms of ordinary rights of property, and these terms will, of course,

¹² Compare the change in the juridical nature of curtesy, effected by the M. W. P. Act, 1882; Wols. Conv. and Settled Land

Acts (9th ed.) 282.

¹³ See *Mercer v. Liverpool Ry.*, [1903] 1 K. B. at 662.

only be applied to the newly created rights by analogy, and as being the best that can be found; one term of ordinary law which is to be specially avoided, however, is the technical expression "legal estate," and it is also not desirable to use more than can be helped the expression "equitable estate." The difficulty is the same as always arises when a novel right of property has to be dealt with—to find the most suitable analogy.¹⁴

It is obvious that the registered estate has analogies to both the legal and the equitable estate; it has also analogies to the interest vested by a registered assurance in a register county, and to the holding title conferred by an equitable estate where the legal estate cannot be invoked against the equitable owner. Analogies may also be drawn from other systems of registration and conveyancing in England, the United Kingdom generally, and the British dominions beyond sea, as already noticed in Chapter I. Other new rights and estates created by statute also afford obvious analogies. Such are rights created under the Lands Clauses Consolidation Act, 1845, the Settled Land Acts, and the Married Women's Property Acts; the legal separate estate of a married woman bears a considerable resemblance to the new statutory estate under the Land Transfer Acts, inasmuch as the legislature has in each case adopted rules of the Courts of equity, and out of them has framed enactments which create new rights and estates equal in value to the ordinary legal estate. It is proposed at present to refer, by way of illustration, to three different interests in land in English law: (1) An overriding power of appointment; (2) The interest of a person who holds by virtue of long possession under the Limitation Acts; (3) The interest of a person entitled to specific performance under the Judicature Acts.

1. The analogy exhibited by the registered estate to an overriding power has been adopted by Cozens-Hardy, L.J.,¹⁵ who carried the analogy so far as to lay down that the interest of a registered proprietor is not an "estate" in the land at all, but merely a power. The case of *Capital and Counties Bank v. Rhodes* is the only case, so far, in which the position of a registered proprietor, and the relation between the registered estate and the legal estate, have come under judicial notice, and the observations of the Lord Justice, though only dicta, have therefore the greater weight. The proposition that the interest of a registered proprietor is only a power seems open to two criticisms. The first is, that it is inconsistent with those provisions of the 1875 Act which distinctly state that the registered proprietor has vested in him an estate in fee simple,

¹⁴ See, for instance, *Mercer v. Liverpool Ry.*, [1903] 1 K. B. at 663; *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. at 399, 400.

¹⁵ *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. at 655.

or possession for a leasehold estate;¹⁶ these provisions no not appear to have been taken into consideration in *Rhodes'* case. It seems impossible to give to these enactments any other meaning than that the interest conferred by registration is—so far as ownership, as distinguished from incumbrance, is concerned—in the nature of an “estate” in the land as usually understood, and not a mere power. The word “proprietor,” too, seems to be used as a synonym of “owner,” in the sense of a person having a certain quantity of estate in the land. In the Report of 1857 “owner” and “proprietor” are used interchangeably, and with the same meaning (*ante*, p. 9), as persons who have estates in land vested in them, and so in the Land Registry Act, 1862.

The second criticism is, that if the registered proprietor's interest is a “power,” it must be a power over the legal estate, or nothing. Now if it be a power over the legal estate, the effect of the exercise of the power will be to vest the legal estate in a succeeding proprietor. This is plainly inconsistent with other provisions of the Acts which allow of the legal estate remaining vested in other persons—as in the case of registration with possessory title, or with absolute title on the strength of an equitable fee simple only.

The objection to employing the analogy of a power, to illustrate the nature of the registered estate, is that it tends to suggest too great a difference between the rights of ownership in unregistered land, and similar rights in registered land. There is, however, a certain degree of similarity between the operation of an overriding power, and of a statutory transfer by a registered proprietor. In each case rights residing in a person who has the legal estate disappear; the difference in the modes of their operation is that in the case of the power the legal estate is transferred to another person, whilst in the case of the statutory transfer the legal estate is not, theoretically, affected at all, though sometimes abrogated for all practical purposes. The power or right to make statutory dispositions, has also, whilst remaining unexercised, great similarity to an actual overriding power which remains, as it were, suspended and ready for use when necessary. In each case many transactions with the land may take place unhindered, subject to the risk of being “impaired” by the exercise of the rights held in suspense. In each case, too, the legal estate may be said to be unaffected and to remain in force as before, but this is far from being the case for any practical purpose; the practical result is that the legal estate is one degree lower in value than before the creation of the suspended rights, and may not inaptly—in its relation to the power or the

¹⁶ 1875, ss. 7, 13, 30, 35.

right of disposition—be compared to an equitable estate as related to the legal estate in the same land.

2. The analogy afforded by an interest gained under the Limitation Acts, by means of long possession, is in some respects very close. This interest is a statutory right to possession, including both the right of enjoyment and of alienation, and is as much in the nature of actual ownership and estate in the land as if conferred by a regular assurance; it is a legal interest which overrides and abrogates for all practical purposes the legal estate of the former owner, though without technically causing any transference of that estate; in Courts where law and equity are administered concurrently¹⁷—in the Supreme Court of Judicature and on appeal therefrom—the “legal” rights of the person in possession include his rights in equity.¹⁸ On all these points the statutory registered estate has a close similarity to the interest of a person holding by long possession. The registered estate may be a fee simple, or a leasehold estate, and may completely destroy or abrogate, as where an absolute title is registered, other interests in the land with or without exceptions.¹⁹ In one respect, however, the registered estate differs from the statutory estate under the Limitation Acts, as it differs from the ordinary legal estate—*i.e.* that registration, and not seisin or possession, is the badge of the ownership; possession is of the essence of the new owner’s ownership under the Limitation Acts, and it appears to be turned into seisin, in the case of freehold land.

3. The analogy to the interest of a person, entitled in a Court of law and equity to specific performance of an agreement, deserves notice particularly by reason of the transformation, in the case of this interest, of purely “equitable” into “legal” rights. This interest, which was made possible—and, substantially, created—by the Judicature Acts, is best illustrated by the case of a person holding possession of land under an agreement for lease from the person who has the legal estate; “since the Judicature Acts there are not, in such a case as this, two estates as there were formerly, one at common law by reason of the payment of the rent and another in equity under the agreement, but the tenant holds under the same terms, and has the same rights and liabilities, as if a lease had been granted.”²⁰ The same principle, however, applies both to agreements or contracts for interests other than leasehold,²¹ and

¹⁷ See *Foster v. Reeves*, [1892] 2 Q. B. 255.

¹⁸ See the cases cited in note 9, *supra*.

¹⁹ 1875, ss. 7, 13, 18, 22, 30, 35, 40, as amended.

²⁰ *Walsh v. Lonsdale* (1882), 21 Ch. D. at 14, as cited and quoted in *Manchester*

Brewery v. Coombs, [1901] 2 Ch. at 617.

²¹ See and distinguish *Driscoll v. Bultersa*, [1903] 1 K. B. 881, 887; and see *Manchester Brewery v. Coombs*, *supra*. The position of a person in possession by virtue of a contract for purchase of the fee simple is well illustrated by an Australian case:

to interests acquired by long possession under Limitation Acts.²² In each case the interest of the person who is secured in his legal rights by the Court is in the nature of a new composite interest, which has not as yet had any name assigned to it, but is referred to and described in terms of the double interest—or “two estates as there were formerly.” In much the same way statutory registered estates and interests under the Land Transfer Acts appear to be new composite estates or interests, which have certainly had assigned to them well-known names of estates and interests under the general law, but are none the less not juridically identical with those estates and interests—being as it were compounded of rights and incidents which it would be necessary, if complete explicitness were wanted, to describe in terms of statutory rights, common law rights, and equitable rights.

The two fundamental differences, between the ordinary estates in unregistered land—fee simple, leasehold estate—and the registered estates in registered land which bear the same names, are : (1) The registered estate cannot be broken up, or decomposed, into legal and equitable estate ; (2) The title to the registered estate is, in varying degrees, warranted by the mere fact of registration.

1. Nowhere in the Acts or Rules is the registered estate referred to as being other than a single undivided interest—though “equitable title” is mentioned in the 1903 Rules (r. 225). It has already been pointed out (*ante*, p. 90) that the expressions “legal estate” and “equitable estate” are not applied to registered interests in registered land, and that (Chapter I.) one vital principle of the reform movement, which culminated in the passing of the 1875 Act, was the abrogation of the equitable “estate” as a distinct estate or species of ownership of the land side by side with the legal estate, and the provision of other methods of protecting equitable rights. The distinction between fiduciary and beneficial registered proprietors is as plainly indicated and preserved as in ordinary law, but their positions differ in juridical theory from the positions in ordinary law, and in relation to unregistered land, of legal and equitable ownership²³—and even fiduciary and beneficial ownership. The new registered estates are composite interests, partaking of the nature of both legal and equitable rights, as these are understood in ordinary law, but enforceable by the law of the land as being legal interests created by statute. This will appear more clearly in treating of equitable interests later on. The provisions of the

Sandhurst Building Soc. v. Gissing (1889), 15 V. L. R. 329; see Hogg's Aust. Torrens Syst. 812.

²² *Warren v. Murray*, [1894] 2 Q. B. 648, 651.

²³ Scottish writers sometimes employ

the terms “legal estate,” and “equitable estate,” merely by way of convenient analogy, although in Scottish law these divisions of ownership have no technical existence: see Erskine's Princ. (20th ed.), 523.

Acts and Rules, which particularly render this view of the system necessary, are those relating to the warranty of title, rectification of the register, the exclusion of particulars of trusts from the register, and the protection of beneficial interests by means of registered notices, cautions, etc.²⁴

2. The warranty of title, provided for by making the title of the registered proprietor—as it appears on the register—good against the world with specified exceptions only, is of varying degrees of strength; the title registered may be absolute, qualified, or possessory.²⁵ The difficulty of giving an account, theoretically and practically correct, of the nature of the registered estate is chiefly due to the fact that this warranty is of varying degrees—in other words, that titles may be registered as absolute, qualified, or possessory. Were the title registered made absolute in every case, the practical difficulty would have been comparatively slight, for the relation between such a title, and the legal estate then *ex hypothesi* superseded, would have very closely resembled the relation between a title under the Limitation Acts and the legal estate of the dispossessed owner (*ante*, p. 93). But first registration with a possessory title gives a warranty of title which is, at the moment of registration, of the very slightest kind, and in fact amounts only to a warranty that the proprietor was then apparently owner of the registered land.²⁶ The registration does not (1875, s. 8) “affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor;” these estates and interests are—in a phrase of frequent occurrence in the Acts and Rules—“excepted from the effect of registration.” With these exceptions—“save as aforesaid” (s. 8)—the registration has “the same effect as registration of a person with an absolute title,” *i.e.* the registration may possibly “vest in the person so registered an estate in fee simple” (s. 7), subject to other specified interests. In the event of the first proprietor not having the legal estate vested in him, there will then be in existence the statutory fee simple conferred by registration, and the ordinary fee simple, and of course the legal and equitable fee might be in different persons. The effect generally of registration appears to be, as already stated, *ante*, p. 88, that the legal estate in the fee simple is removed one degree lower in the scale of estates in the land. Registration may be compared in its effect to

²⁴ See 1875, ss. 7-9, 13, 18, 22, 40, 50-53, 68, 83 (1, 2, 3), 95, 96, and amendments, and rules relating to them. If it be desired to compare the statutory registered estate with other statutory estates, created by colonial statutes, and held to

be incapable of separation into legal and equitable, instances of these may be found in Hogg's *Aust. Torrens Syst.*, 767.

²⁵ 1875, ss. 6-9, 13; 1903, rr. 52, 55-59.

²⁶ See *Marshall v. Robertson*, Sol. J., December 2, 1905, p. 75.

the compulsory acquisition of land under the Lands Clauses Consolidation Act, 1845; by the operation of that Act, the persons who "take" the land under their statutory powers acquire the legal right to occupy and use it, whilst the owner's estate in the land is, in effect, turned into a right to compensation—a right of property as distinguished from a mere right of action for damages²⁷—and this right is not less secure than was his estate in the land; where settled land is taken, the position of the tenant for life has been compared to that of a protector of the settlement,²⁸ and is analogous to the position of a tenant for life under the Settled Land Acts, who can become registered proprietor of registered land. Another instance, of a mere right or claim being, in effect, as securely vested by statute as the corresponding estate which it represents as a right of property, is the case of an under-lessee whose estate for years has been destroyed by forfeiture of the head-lease, and who has a right to an order vesting the property in him for another estate for years.²⁹ Registration may also be compared, in its effect, to disseisin under the old common law, the estate of the person disseised being turned into a right of entry;³⁰ one result, as pointed out, *ante*, p. 93, of the Acts and Rules seems to be that registration is substituted for the seisin of the common law. And as the owner of the right of entry may recover the land and so regain his seisin, so the technical legal estate would seem to take its original place among land rights, on removal of the land from the register, where removal is possible (*ante*, p. 83).

The foregoing remarks will, perhaps, be made clearer by the following concise—though necessarily inexact—summary:—

Each of the terms "legal" and "equitable"—as applied to rights of property in land—is often used in a relative rather than an absolute sense, and may thus be ambiguous. "Legal" may mean either completely valid and recognized by law, or technically right but not completely valid; "equitable" may mean substantially valid by law but not technically complete, or partially right but incomplete and not valid by law. Originally, "legal" meant "completely legal," and "equitable" meant "merely equitable." Now, "legal" usually means "merely legal," and "equitable" usually means "completely equitable." In order of value, beginning with the highest, the four kinds of rights would stand thus:

1. Completely legal.
2. Equitable (= completely equitable).

²⁷ *Mercer v. Liverpool Ry.*, [1903] 1 K. B. at 661, 663; *Dawson v. Great Northern and City Ry.*, [1905] 1 K. B. at 271.

²⁸ *Ex parte Staples* (1852), 1 D. M. & G. 294.

²⁹ Conv. Act, 1892, s. 4; *Ewart v. Fryer*, [1901] 1 Ch. 499, 514.

³⁰ See the notes to s. 39 of the Real Property Lim. Act, 1833, in *Shelford's R. P. Statutes*.

3. Legal (= merely legal).

4. Merely equitable.

The effect of the Land Transfer Acts is to abrogate, with respect to registered land, the second of these classes—"equitable" rights—by merging it in the first—"completely legal" rights, leaving "legal" and "merely equitable" rights to represent the former bare legal estate and equitable estates and rights respectively.

The provisions of the Land Transfer Acts, which—whether the registration be absolute or possessory—confer a fee simple estate on a registered proprietor who has not the legal estate, will be found to be consistent with the view that the rights of any person, who at the date of the registration had an estate in fee simple, are not abrogated, but are preserved in one of two ways. It may be said that the owner of the fee simple has his estate—in the now registered land—turned into a right either of compensation or restitution, *i.e.* a right either to payment of the value or recovery of the land itself. Whether the remedy in any particular case is compensation or restitution, will depend on the exact effect of the registration; if the registration is with possessory title only, the remedy would usually be restitution, whilst if the registration is with absolute title, compensation may be the remedy. The provisions of the Acts and Rules, which afford these remedies, are those relating to rectification of the register, and to indemnity for loss by registration; this subject will be treated of in Chapter VII.

The possession of the legal estate is really only the technical expression used to denote ownership in English law—it may be called the criterion of ownership; and the scheme of the Land Transfer Acts may be said to aim at substituting for the legal estate another criterion of ownership, *i.e.* entry on the register, or the registered estate. The view that the legal estate is thus turned into a right—sometimes a complete right to have the ownership—as distinct from the actual ownership, seems to follow logically from this principle of the system. That the ordinary legal estate is no longer to be regarded, with respect to registered land, as ownership,³¹ but rather as something analogous to equitable ownership, is also a view which is supported by a decision of the Privy Council on the Australian system.³² The relevant facts in this case were, shortly,

³¹ I have avoided using the expression "legal ownership" in this passage; if the meaning is not clear without prefixing the word "legal" to "ownership," it must be remembered that the adjective will have no technical meaning, but will simply connote the attribute of being recognized in the Courts as being valid ownership by the law of the land, notwithstanding that it may be qualified as to the use to be

made of the property, as pointed out in the Scottish case of *Glasgow v. McEwan*, [1900] A. C. at 97.

³² *McEllister v. Biggs* (1883), 8 A. C. 314, on appeal from South Australia. The fact that Biggs had, or would ordinarily have had, the legal estate does not clearly appear from the report on appeal. The case is reported below as *Biggs v. McEllister* (1880), 14 S. A. R. 86.

these: The legal fee simple being outstanding in Guthrie, McEllister (the testator of the appellants) succeeded in registering the land on the strength of his equitable title, the registration being what would be called under the English system "absolute"; Guthrie then conveyed the land to the respondent Biggs by ordinary deed, and the latter would have had the technical legal estate if it could have passed to him by the deed. Biggs took proceedings in equity against the appellants, claiming that the registration should be cancelled, and a decree was made in his favour, and on appeal was upheld by the Privy Council. The ground of the decision in respondent's favour was that the registration had been obtained by fraud, and under the South Australian Act this made the registration—though otherwise indefeasible or "absolute"—of no avail against the person entitled to the land at the time of registration. The South Australian Act then in force expressly enacted that no estate in registered land was to pass by an unregistered instrument, and one point made by the appellants was that, the land being registered and the conveyance to Biggs being unregistered, no estate passed to him, and he therefore had no locus standi. The Privy Council, however, held that, although no estate passed by the conveyance, yet the "equitable right" to set aside the registration for fraud did pass. It is to be observed that, although the registration was void or voidable at the instance of Biggs, yet he had only a "right" to have the ownership, and not—until the registration was actually cancelled—the ownership itself. Notwithstanding that the South Australian Act contains no such express enactment as s. 49 of the 1875 Act, yet the conveyance to Biggs did in fact carry the whole of the estate and interest vested in Guthrie—an estate and interest which was held to be paramount to the registered estate in point of value, though technically only a "right" to have that registered estate. It is submitted that the distinction drawn in *McEllister v. Biggs* between the registered ownership of the land, and the right to have the ownership, applies exactly to a similar state of circumstances under the English Acts. If any exception be taken to this view by reason of the use of the expression "equitable right," it may be pointed out that it would possibly be more correct to have called Biggs' right a "legal" one, than to call a similar right under the English Acts "equitable," though the mere matter of nomenclature does not seem to be important. The point to be noticed is that Biggs' right of property could not be called ownership until he had had the registration, which was by statute void as against him for fraud, formally cancelled.

The view that the registered estate does, as it were, place the

legal estate a degree lower in the scale of estates than the latter formerly occupied, without necessarily abrogating the substantial rights of property implied by its possession, seems to be further confirmed by the existence of one of the leading principles of the system, *i.e.* that it is the "land" or the "property" which it is the primary object of the system to place on the register, the name of the particular proprietor, and the incumbrances to which the land may be subject, being relatively subordinate matters (*ante*, p. 82). Once on the register, the land (if in a compulsory district) cannot be removed from it, and the appropriate remedy, if the land has been placed on the register by a person who is only the apparent, and not the real, owner, seems to be "rectification"—change in the name of the proprietor—not annulment of the registration or removal of the land from the register (*ante*, p. 83).

The distinction between absolute and possessory title will not, then, affect the nature of the estate conferred by registration, or the relation which theoretically exists between the registered estate and the legal estate. So far as registration with absolute title is concerned, the theoretical relation between the registered estate and the legal estate is not, perhaps, of great importance, whilst the practical relation is not difficult to discover. But in the case of registration with possessory title, the relation between the registered estate and the legal estate is all-important for practical purposes. The principle that registration of the land is to be regarded as a primary object of the system appears to afford the best clue to a logical and consistent interpretation of the Acts and Rules on the subject of the relation between the registered estate and estates and interests (including the legal estate) which are "excepted from the effect of registration." The idea underlying the scheme of possessory titles seems to be that the register is primarily a register of property, and of the apparent ownership of each individual property; how far this apparent ownership is real will depend on the extent of the warranty of title, and the contents of that part of the register in which charges and incumbrances are entered. It seems to be contemplated that, once the land is registered, the rightful owner—if it is claimed that the wrong person has been made proprietor—should come forward and have the register "rectified," or receive indemnity, as the case may be; whilst persons entitled to incumbrances, or interests short of ownership, should in like manner come forward and have their interests entered on the register. To this end, in addition to provisions for rectification and indemnity, special provisions are made for enabling the owners of incumbrances and other interests to register these interests—although created before the land was placed on the register—so that for the future these

interests may be dealt with in the same manner that interests created after registration of the land are dealt with.³³ In the meantime, these interests "excepted from the effect of registration" remain unimpaired as rights of property, though possibly in some cases changed in form, and their "enforcement" is not "affected or prejudiced"; their owners, by placing their interests on the register, secure their complete recognition, but should they neglect to "enforce" their interests the only risk they run is that in course of time the Limitation Acts would effectually prevent their "enforcement," as would of course be the case apart from registration altogether.³⁴ It seems clear that the "enforcement" of rights excepted from registration means their enforcement against the proprietor on the register, and does not, for instance, include the right to bring an action for recovery of the land from an intruder without reference to the existing proprietor who is *de facto* registered. This is consistent with the view that the person actually on the register is to be regarded as owner, notwithstanding that his registration may be possessory only, and is supported by the analogy of the Australian system.³⁵

These rights of the holder of the legal estate may, however, be effectually conveyed, assigned, or transferred, as is shown by the case of *McEllister v. Biggs*, and one important question must be noticed, *i.e.* whether an assign of the legal estate, without notice of the registration, would be entitled to rely on the doctrine of purchase without notice so far as to have his legal estate declared paramount to the registered estate—when the registration is with possessory title only—notwithstanding that his assignor could not have done so.

The enactment which preserves rights existing at the time of first registration with possessory title is s. 8 of the 1875 Act, which provides for the "enforcement of any estate, right, or interest adverse to or in derogation of the title of" the registered proprietor, but these rights must be "subsisting or capable of arising at the time of registration." There are thus two characteristics which an enforceable right must have: It must be "adverse to or in derogation of" the registered title; and it must subsist, actually or potentially, "at the time of registration." Now it seems clear that if the registered proprietor had, at the time of registration, a complete equitable title, an outstanding legal estate could not be said to be "adverse to or in derogation of" his title, although subsisting "at

³³ 1875, ss. 5, 11; 1903, rr. 175-181.

³⁴ The scheme of compulsory registration with possessory title is very similar to the scheme proposed by Mr. Robert Wilson, and set out in the Reports of 1850

and 1857 (*ante*, pp. 8, 13).

³⁵ See *McEllister v. Biggs*, referred to at some length *ante*, p. 98; *Little v. Dardier* (1891), 12 N. S. W. Eq. at 321.

the time of registration." On this legal estate becoming vested in a purchaser without notice of the equitable title or the registration—an improbable, though not impossible event, it would, no doubt, be "adverse to or in derogation of" the registered title, but could it be said to have been "subsisting or capable of arising at the time of registration"? If the personality of the owner of the legal estate, and rights in virtue of it, is to be disregarded, certainly the legal estate itself was subsisting at the time of registration, and rights under it could then have arisen; but if the change of ownership is to be taken into account, the legal estate in the hands of the new owner is a new right created after the time of registration, and does not therefore comply with the requirements of the enactment. Until the meaning of the enactment is settled by judicial decision, practitioners cannot do otherwise than act on the view that the legal estate, if transferred to a purchaser without notice, will enable the latter to claim rectification of the register as having a right paramount to the registered estate. And this view must, *a fortiori*, be acted on if the owner of an outstanding equitable interest gets in the legal estate when also outstanding.

SUB-SEC. 2.—*The General Nature of the Registered Charge on Land.*

As the registered estate represents the form of ownership of land introduced by the new system, so the registered charge—in its wide sense, including "incumbrance" and "land charge"—represents the new form of incumbrance upon land. The registered charge is a novel statutory interest, the nature of which it is as important to understand, and which at the same time is as difficult to describe, as is the case with respect to the registered estate. As in the case of the registered estate, the general nature of a registered charge is the same whatever be the degree of warranty attached to the title with which the land is registered; whether it be completely valid, or under certain circumstances defeasible, will depend on considerations similar to those which will govern when the registered estate comes into competition with the legal estate or other forms of ownership under the general law.

Like the registered estate, the registered charge is a composite interest, combining characteristics and properties which, under the general law, are kept distinct and regarded as belonging to interests differing widely *inter se*. The registered charge, however, goes further than does the registered estate in combining qualities of interests which are distinct under the general law; in describing the properties, and enumerating the characteristics, of a registered charge, it will be found necessary to draw on analogies derived from both ownership and incumbrance, as these are usually understood

with respect to unregistered land. In the case of the registered estate, the analogies, by reference to which it has been described, merely serve as aids in endeavouring to set forth the functions of the new estate, and do not constitute a basis for classifying divisions of registered estates; in the case of the registered charge, what appear to be the nearest analogies in general law, by which it may be described, serve also as a basis for classification of the different classes of charges. The Acts and Rules themselves contain this classification of registered charges,¹ but it is not very explicitly set forth, owing to the prominence given to the functions of the registered charge as the regular method of effecting a mortgage over registered land.

The registered charge resembles: (1) A rent charge issuing out of land; (2) a charge on land of a gross sum of money created by deed or will; (3) a mortgage of land for money lent; (4) a charge on land created by an Act of Parliament without the necessity for the execution or registration of any instrument.

1. The registered charge chiefly resembles a rent charge issuing out of unregistered land, in being strictly a legal interest, and as such not liable to be defeated by any change in the ownership of the land. A rent charge, duly registered in accordance with the enactments on the subject,² is an incorporeal right—not always a hereditament, for it may be a chattel real³—the property in which exists independently of the land out of which it issues; it differs altogether from an ordinary charge on land created by deed, which cannot usually be rendered perfectly secure without a conveyance of the legal estate in the land itself. It is this feature of indestructibility and independence of all ownership of the land which justifies the use of a rent charge as an analogy in describing the registered charge to be a legal interest, as distinguished from a mere equitable charge on land—which is liable as such to be defeated by changes in the ownership of the land. The creation of a quasi rent charge in registered land by means of a registered charge belongs to the classification of charges, to be dealt with later on.

2. Under the general law a charge of a sum of money on land—whether of definite amount as by way of portion in a settlement, or of indefinite amount as a charge of debts by a testator—cannot ordinarily be made completely valid unless accompanied by an assurance of some actual estate in the land. In a settlement of unregistered land the ordinary practice is to secure payment of a

¹ See 1875, s. 22; 1897, ss. 6 (7), 9 (3); 1903, rr. 1 (3), 133, 131, 170, ff. 44, 45.

Vict. c. 26).

² Judgments Act, 1855 (18 & 19 Vict. c. 15); Land Charges Act, 1900 (63 & 64

³ See *In re Fraser*, [1904] 1 Ch. 111, 726.

portion by vesting in trustees a long term of years, which can be made to cease on the portion or sum of money being raised and paid; the interest of the trustees is, in effect, a chattel interest which comes to an end on payment of money charged on the land, though they are clothed with ample powers of entry, etc., for enforcing payment. An illustration of a chattel interest of indefinite duration, for securing payment of moneys charged on land, which ceases ipso facto on the money being paid, is afforded by a devise of freehold land for payment of debts before the Wills Act, 1837.⁴

The registered charge presents analogies to these chattel interests on several points. It confers on the proprietor of the charge a strictly legal interest in the land, as distinguished from a merely equitable and defeasible right. It is an interest which, though not an assurance of the property in the land, confers on the proprietor the potentiality of alienating the land completely from the proprietor of the land. It ceases on the debt ceasing to exist.

3. The registered charge resembles an ordinary mortgage by assurance of the legal estate in the mortgagor's land, with proviso for redemption, as such mortgages are regarded by Courts of equity, in that the whole estate and property in the land itself remains in the proprietor of the land, while the proprietor of the charge gets a complete security for enforcing payment of the debt.

As already stated, the classification of the different kinds of registered charges will be referred to later on. Each kind has, of course, statutory incidents according to the function which it is intended to perform. The present observations are directly to registered charges in general, and the features common to every kind of charge.

4. The registered charge closely resembles those charges created by Act of Parliament which take effect on the occurrence of the event pointed out by the statute, and are independent of the execution or registration of any particular instrument. Such are charges brought into existence by the Death Duties Acts; by these, and analogous Acts, money is charged on, or made payable out of, land as effectually as if a formal conveyance of some legal estate in the land had been made.⁵ The interest created by a judgment-mortgage in Ireland is another instance of legal charges created by an Act of Parliament without the necessity of execution of an instrument by the owner of the land, and is in many respects analogous to the registered charge under the Land Transfer Acts.⁶

⁴ Burton Comp. (3rd ed., 1834), 866.

⁵ See *Lord Advocate v. Moray*, [1905] A. C. 531.

⁶ See the Judgment-Mortgage (Ireland) Acts, 1850 and 1858 (13 & 14 Vict.

c. 29; 21 & 22 Vict. c. 105). These Acts are printed, and the cases on them commented on, in Madden's *Registration of Deeds* (2nd ed.), 82 *et seq.*, 335, 353.

With respect to the exact juridical nature of a right—legal and good against the world—to receive money out of land, otherwise than by way of rent on a reversion, and independently of the ownership of the land, such a right may, so far as unregistered land is concerned, be either realty or personalty; except in the case of rent out of freehold land, such a right is usually personalty and not realty. The new statutory registered charge may perhaps be described as a legal right, which appears *prima facie* to be in the nature of personalty, to receive money from land independently of the ownership of the land. The tendency both of the new system and of the law of property in general, seems to be to assimilate rent charges in their juridical nature to other annual payments of money charged on land; in the definition of a “land charge”—mainly copied from the Land Charges Act, 1888—in r. 1 of the 1903 Rules occurs the expression “rent or annuity . . . charged . . . upon land,” and the provisions of s. 44 of the Conveyancing Act, 1881, show the same tendency.

It may be a question whether registered charges are to be regarded as realty or personalty according as analogous interests in unregistered land would be realty or personalty. Because, for instance, a rent charge in fee simple out of unregistered freehold land is realty, is an annuity charge in fee simple on registered freehold land to be therefore regarded as realty? Or, because a legal mortgage of unregistered land is personalty, is a mortgage-charge on registered land to be therefore regarded as personalty? It is submitted that the analogies from the general law with respect to rent charges and mortgages must be applied cautiously, and that the novel qualities of the registered charge may, in investigating its juridical character, be found to be such as to outweigh any presumption that these analogies are to be followed.

Even if all interests conferred by registered charge are held to be personalty, it seems permissible to apply the analogy of an annuity which, although not charged on land solely and so not being realty, might yet have been transmitted to the heir and not the executor or administrator.⁷ But there seems to be some ground for believing that an annuity charged on realty only might be held to be also realty;⁸ on this principle a perpetual annuity secured by a registered charge—an annuity-charge—on freehold land would be realty as much as is a rent charge issuing out of unregistered freehold land.

With respect to sums of money other than perpetual annuities

⁷ See *Aubin v. Daly* (1820), 4 B. & Ald. 59, 22 R. R. 623; *Radburn v. Jervis* (1840), 3 Beav. 450, 52 R. R. 183.

⁸ See *Parsons v. Parsons* (1869), L. R. 8 Eq. 260.

secured by registered charge, although the law no doubt is still, broadly, that "a debt cannot descend to the heir,"⁹ yet there are two considerations to be borne in mind: in the first place, the registered charge does actually give to the proprietor a legal interest in the land, and not what is ordinarily known in English law as a "charge"; in the next place, cases decided—under the Limitation Acts and otherwise—as to how far the principal and interest of a legal mortgage can be said to be charged on the land, and how far they are secured only by the personal covenant, tend to suggest that mortgage interest, arising directly from the land, may possibly be held to be much nearer juridically to a rent charge than when arising only from a personal covenant.¹⁰

SUB-SEC. 3.—*Classification of Registered Estates and Interests.*

The Acts and Rules provide for two kinds of registered ownership of land, or estates in the land, and three kinds of other registered interests in the nature of incumbrances. There are thus to be considered: (1) Freehold land; (2) Leasehold land; (3) Charges, in a narrow sense; (4) Incumbrances, in a narrow sense; (5) Land charges, in a special sense.

1. Although "freehold land" may be said to mean the same thing whether the land be registered or not, the ownership of registered freehold land is not quite the same thing as the ownership of the same land unregistered, whether in respect of the owner's rights, or the correlative rights of other persons. Every registered proprietor of registered freehold land has an estate in fee simple, subject to other interests and rights.¹ This fee simple cannot be divided, either into estate for life and estate in remainder, or into legal and equitable estate (*ante*, p. 94); in this respect the title of the proprietor is treated much as though the theory of feudal tenure of land had been abrogated in favour of allodial ownership (*ante*, p. 47). Legal rights—in the sense of rights fully protected by law—identical in substance with the estate for life, equitable estate, etc., of ordinary law, may be created in registered land, but the methods of their creation and the provisions for their protection differ from those of the ordinary law.

With respect to the rights of ownership vested in the proprietor of registered freehold land, apart from other persons' correlative

⁹ Brooke's Abr. "Annuity," 39.

¹⁰ See *In re Lloyd*, [1903] 1 Ch. 385, and cases there cited as to arrears of mortgage interest under Limitation Acts. Some Australian cases point the distinction between the land and the covenant as the source of interest, and suggest that, as regards registered land, the interest may

not arise directly from the covenant at all: *Commissioners of Taxation v. Jennings* (1898), 19 N. S. W. 193; *Commissioners of Taxation v. Armstrong* (1901), 1 S. R. (N. S. W.) 48; *Ivey v. Commissioners of Taxation* (1903), 3 S. R. (N. S. W.) 184.

¹ 1875, ss. 7-9, 30-32.

rights, the fee simple of the proprietor is a statutory estate, and therefore does not necessarily confer the same rights of property as an ordinary legal or equitable fee simple. For one thing, the estate cannot, as just stated, be divided into life estate and remainder, legal and equitable. A lease for years cannot be created so as to bear exactly the same relation to the reversion as under the general law; the nearest analogy to the general law which is possible in such a case is the position held by a lessee who has a lease which is registered as a leasehold title. If leases other than registered leasehold titles, estates for life or in tail, etc., are to be created, these cannot be carved out of the proprietor's fee simple exactly as under the general law, but must be created on a different plane, as it were, or "off the register."

Although occupation leases for 21 years or less stand on a different footing from an estate for life or in tail, inasmuch as the former do not require any entry to be made on the register in order to be theoretically valid and practically safe, whilst the latter would be liable to be defeated for practical purposes unless protected by entry of a caution or restriction of some kind on the register, yet for the present purpose both kinds of estate illustrate what may be called the inherent or self-imposed limits to the rights conferred by the registered or statutory fee simple. The mere fact that the registered proprietor of the fee simple cannot create a registered lease for 21 years or less, or a registered life estate, etc., does not necessarily imply that he cannot create any such valid lease or life estate, but since a proposing lessee or purchaser cannot rely on protecting himself by registration, he must ascertain at his peril that no other person is entitled to object to the creation of the proposed lease or life estate. In this way a fiduciary proprietor is automatically prevented from creating such interests where these would defeat the rights of beneficiaries.

The registered proprietor of freehold land has vested in him, as part of the statutory fee simple, "all rights, privileges, and appurtenances belonging or appurtenant thereto" (1875, s. 7). Since the fee simple is an undivided one, conferring rights which under the general law might be conferred by the legal fee or the equitable fee, it seems only reasonable to place a corresponding construction upon the "rights, privileges, and appurtenances," so as to make them include rights in equity as well as at law; but it may be difficult to decide exactly what "rights," etc., are to be included. There is one class of rights which, if not included in the present category, would perhaps constitute a *casus omissus*—the rights of a reversioner under the covenants and conditions of a lease for years. Put in a concrete form: Does the registered estate—as distinct

from the legal estate—carry with it the benefit of covenants and conditions, running with the land, which were entered into with a former owner when the latter had the legal estate? This may be illustrated by the following: A. agrees to purchase from B. land subject to a lease for years, the lease containing usual covenants and conditions for re-entry, etc., and A. pays his purchase money and registers the land without taking a formal conveyance (*ante*, p. 52). Whether the land be registered with absolute, or only with possessory, title seems to make no difference; in one case the lease would be entered on the register as an incumbrance, and in the other it probably would not, though it might, be so entered. A. thus, though registered proprietor, has not the legal estate. Can he sue on the lessee's covenants in the lease, or enter for non-payment of rent, etc.? If these covenants and conditions so inhere in the land as to be "rights" or "privileges" belonging to it, then apparently A. would be in the shoes of B. just as though he were B.'s assign at law, and would have all the incidental remedies of a reversioner. The principles which underlie modern decisions on the rights of equitable assignees² seem—when applied to the scheme of the Land Transfer Acts with respect to substituting the registered estate for other rights in ordinary land—to justify the proposition that the registered proprietor for the time being is to be taken as having, as part of and annexed to his registered estate, all rights which, either at law or in equity, could have been enforced by the owner of the land before registration.

One argument in support of this view may be drawn from the corresponding enactment which describes the effect of the registration of leasehold land.³ By s. 13 of the 1875 Act the new registered estate is to be subject to "all implied and express covenants, obligations, and liabilities incident to" the leasehold estate described in the lease. If these covenants, etc., can be enforced by the freehold reversioner who has not registered his fee simple—and it will subsequently be suggested that they can—against any registered proprietor of the leasehold whether the latter have the legal estate in the term vested in him or not, this appears to afford some ground for holding that the covenants, etc., in an unregistered lease can, when the freehold is subsequently registered, be enforced by a registered proprietor of the freehold land, irrespective of his having the legal estate vested in him.

If this view is untenable, the question arises whether A. can enter against the lessee, and sue on the covenants, without getting in the legal estate from B. It seems clear that, in the event of his

² See *Rogers v. Hosegood*, [1900] 2 Ch. 388; *Manchester Brewery v. Coombs*, [1901]

2 Ch. 608.

³ 1875, s. 13; 1903, rr. 55-57.

gaining possession without legal proceedings, the lessee could not contest the legality of the entry; it also seems clear that, in the event of its being necessary to bring an action for recovery of the land, or on the covenants, A. could, in the last resort, make B. a party, and so give the Court jurisdiction to vest B.'s legal estate in him, and thus enable A. to succeed in his action.⁴ But it is submitted that a broader view of the case should be taken, and that A. should be regarded as having, by virtue of his registered estate in fee simple, what may be called a "statutory equity" of such a kind as to give him a complete right to use every remedy which B. could have used as the lessee's reversioner, without the necessity of joining B. in an action.⁵

If the registered proprietor can be regarded as having the same estate after registration as before, so far as relates to rights and liabilities under existing leases, then s. 10 of the Conveyancing Act, 1881, would seem to confer on him all the remedies and rights of a reversioner who is entitled to the income of the land subject to the term. The principle laid down with respect to a mortgage—that it effects a severance of the reversion⁶—would seem to apply equally to a contract for sale, which effects an analogous separation of the legal and equitable estates.

Rights analogous to, and answering the same purpose as, estate for life, equitable estate, etc., are, in relation to the registered estate, in the nature of incumbrances,⁷ though they may otherwise, and in relation to other interests, resemble what are ordinarily known as estates. These rights will be treated of later on; at present it will be sufficient to state them shortly, regarded as incumbrances upon the registered estate or freehold land. They may be classed as: (i.) Incumbrances (including mortgages and charges) entered on the register; (ii.) Rights, liabilities, and interests not deemed incumbrances; (iii.) Unregistered estates, rights, interests, and equities—as against fiduciary proprietors only; (iv.) Estates, rights, or interests expressly excepted from registration, including—in case of possessory titles only—those which, at the date of first registration, are adverse to or in derogation of the proprietor's title; (v.) Rights expressed or implied in entries on the register restricting the proprietor's powers of enjoyment or disposition; (vi.) Lien created by deposit of land certificate as security for money.

i. The word "incumbrance" is used in more than one sense in

⁴ See *Allen v. Woods* (1893), 4 Reports 249, 68 L. T. 143; *Antrim Land Co. v. Stewart*, [1904] 2 I. R. 357, 373.

⁵ See *Rogers v. Hosegood*, *supra*, at 394, 398; *Manchester Brewery v. Coombs*, *supra*, at 616, 617; *Formby v. Barker*, [1903] 2

Ch. at 547, 549; *Antrim Land Co. v. Stewart*, *supra*.

⁶ *Municipal Permanent Build. Soc. v. Smith* (1888), 22 Q. B. D. 70, 73.

⁷ See, for instance, 1875, ss. 50, 52.

the Acts and Rules, being applied both to statutory charges and other mortgages, and also to some interests which are not, in ordinary English law, usually termed incumbrances at all;⁸ the word is, in fact, often used rather in the sense in which "burden" or "servitude" are used in Scottish and Roman Dutch law. On the other hand, "incumbrance" is applied to a mortgage other than a statutory charge. Using the word in its widest sense, the incumbrances entered on the register to which freehold land may be subject will include:—

- a. Mortgages existing when the land was registered;⁹
- b. Statutory charges created subsequently;
- c. Land charges;¹⁰
- d. Leases for more than 21 years, or for life, or where the occupation is not in accordance with the lease;¹¹
- e. Freehold estates less than the fee simple;¹²
- f. Rights to mines and minerals, and incidental rights of entry and search, created subsequently to the registration of the land or to December 31, 1897, or proved to have existed previously;¹³
- g. Rights, liabilities, and interests which are usually not deemed incumbrances, but are entered as such in the register after proof of existence;¹⁴
- h. Liability to succession and estate duty.¹⁵

ii. In s. 18 of the 1875 Act a list of "rights, liabilities, and interests" is given which "shall not be deemed incumbrances within the meaning of this Act." But the section has been considerably amended by the 1897 Act, and many of these rights which are not to "be deemed incumbrances" are directed to be entered on the register, and are treated and referred to as incumbrances accordingly; the owner of any such right may, apparently, have it entered on the register.¹⁶ Mines and minerals will now *primâ facie* pass by a transfer of the land,¹⁷ so that land is not to be considered as *primâ facie* liable to any quasi incumbrance in favour of an owner of the minerals. Succession and estate duty may still, in some cases, constitute a liability although not entered as incumbrances; it is only a *bonâ fide* purchaser who is exempted from liability by reason of the non-entry on the register.¹⁸

One class of rights expressly preserved consists of "rights acquired or in course of being acquired under the Limitation Acts,"

⁸ See preceding note.

⁹ 1875, ss. 5, 7 (1), 19; 1903, rr. 175-181, 216, 217.

¹⁰ 1903, rr. 1, 170.

¹¹ 1875, ss. 50, 51; 1903, rr. 201-203, 219, 220.

¹² 1875, ss. 49, 52; 1903, r. 207.

¹³ 1875, ss. 18 (as amended by 1897, sched. 1), 30-33 (as amended); 1903, rr.

213, 214.

¹⁴ 1875, s. 18 (as amended by 1897, sched. 1); 1903, r. 215.

¹⁵ 1875, s. 18 (as amended by 1897, sched. 1); 1897, s. 13; 1903, rr. 208-211.

¹⁶ 1903, r. 215.

¹⁷ 1875, ss. 30-33 (as amended by 1897, sched. 1).

¹⁸ 1897, s. 13; and see 1903, r. 210.

but this is by amendment also expressly "subject to the provisions of" the 1897 Act.¹⁹ The effect of those provisions is that the registration of the land does not in itself operate to destroy any inchoate title by adverse possession or prevent it growing to maturity, unless—in the case of registration with other than possessory title where the adverse claim is not excepted—the land is transferred for value. In the case of registration with possessory title no transfer of the land would have any such effect.

The right of a person holding under an occupation lease or tenancy for a term not exceeding 21 years is also an interest not deemed an incumbrance so as to require entry on the register. This and the preceding provision as to adverse possession together cover practically all cases of possession, and thus except from the complete statutory effect of registration most rights evidenced by possession of the land—though, of course, there cannot strictly speaking be such a thing as a "right" under an adverse possession which has not yet matured into a holding title.

In addition to the list of rights, not to be deemed incumbrances, in s. 18 of the 1875 Act, r. 255 of the 1903 Rules provides that rights appertaining to land or enjoyed therewith, etc., are not to be deemed incumbrances. This provision seems to refer to the enactment in s. 7 of the 1875 Act (amplified in 1903, r. 254), by which a proprietor has vested in him "all rights, privileges, and appurtenances belonging or appurtenant" to the land; it is only necessary where the servient land is also on the register, as it would only be in such a case that there would be any danger of the servient land being freed from the burden by the effect of registration. S. 7 and r. 254 would, of course, be useless on this point, but for the provision in r. 255, which prevents the owner of the servient land from claiming to hold his land free of the burden imposed for the benefit of the dominant land. An amendment to s. 18 directs that if an easement is registered as an incumbrance, the dominant and servient tenements are to be defined, when practicable.

iii. A person who would ordinarily be called a trustee is usually referred to in the Acts and Rules as a proprietor who is not entitled for his own benefit, a person in a fiduciary position, etc., and the word "trustee" is not usually applied to a proprietor once placed on the register;²⁰ there seems to be no instance in the Acts and Rules of beneficial ownership by a registered proprietor being distinctively referred to, though the "beneficial" ownership of unregistered land is referred to.²¹ "Fiduciary proprietor" and "beneficial

¹⁹ 1875, s. 18 (6), as amended by 1897, sched. 1; 1897, s. 12.

²⁰ See, for instance, 1875, ss. 7, 68, 83 (1-3), amended; 1897, s. 6. The same

policy—of avoiding the word "trustee"—is adopted with respect to "legal estate"; *ante*, p. 64.

²¹ See, for instance, 1897, s. 8 (6).

proprietor" seems to be well adapted to express the different characters of a proprietor who is a trustee and of one who is not; each has the same statutory estate, in this respect not answering exactly to trustee and beneficial owner in ordinary law, since the beneficial owner may have only an equitable estate whilst the trustee will usually have the legal estate. The registered estate is only held subject to unregistered estates, rights, interests, and equities in other persons where the registered proprietor is a fiduciary proprietor, and it is only as between the fiduciary proprietor and his beneficiaries that the registered estate is so subject; on the registered estate being transferred to a person who takes for his own benefit—becoming a beneficial proprietor—it ceases to be subject to the rights which are neither registered nor notified in any way on the register.²² The principle of the system, with respect to the protection of the interests of beneficiaries in land vested in a fiduciary proprietor, is that the latter shall either be unable to transfer the land at all without the consent of other persons who are not proprietors, or fulfilling some other similar condition, or else that he shall not be able to transfer to any one who can honestly claim to be a beneficial proprietor; this is effected by entering on the register notice in some way of the beneficiaries' interests, or cautions, inhibitions, and restrictions generally on the proprietor's powers of disposition, as mentioned *ante*, p. 71.

iv. Estates, rights, and interests "excepted from the registration"—to use a phrase frequently occurring in the Rules—are either entered on the register as expressly excepted, which may be done where an absolute title is applied for and a qualified title registered; or these estates, etc., are excepted, by the statutory effect of registration with possessory title, as being "adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of the registration."²³ By "adverse to or in derogation of" the proprietor's title seems to be meant both adverse claims properly so called, and also such non-adverse interests as those of a tenant or a cestui que trust.

v. Rights which entitle the owner to enter restrictions on the register, and so prevent the proprietor from disposing of the land except with the consent of specified persons, or on other similar conditions, are usually such rights as indicate the proprietorship of the land to be fiduciary. These rights may appear on the register with a greater or less degree of particularity, but their exact nature does not affect the nature of the proprietor's estate.

vi. The deposit, or notice of intended deposit, of a land

²² 1875, ss. 7, 30 (amended by 1897, [1892] A. C. at 605.
 sched. 1). See *Heritable, etc. Co. v. Millar*, ²³ 1875, ss. 8, 9; 1903, rr. 48, 49.

certificate as security for money creates a lien on the land which differs in its nature from other merely equitable interests in registered land,²⁴ and the subject will be dealt with subsequently. Except in so far as the possession of such a lien entitles its owner to protect himself by means of an appropriate entry on the register, the registered estate of the proprietor of the land is not affected: when a notice, or other restrictive entry, is registered, the position of the proprietor resembles that of a fiduciary proprietor rather than a proprietor holding subject to a registered charge or incumbrance for securing money, inasmuch as the lienor has no specific statutory rights for enforcing his security conferred upon him, but merely the right, as a practical result, of restricting the proprietor's powers of disposition.

2. The enactments, which state that the proprietor of freehold land has an estate in fee simple, are direct and positive (*ante*, p. 105); the enactments relating to the estate of a proprietor of leasehold land are not so simple. Registration as proprietor is to "be deemed to vest in" the proprietor "the possession of the land . . . for all the leasehold estate" described in the lease on which the title is founded.²⁵ The meaning evidently is that the proprietor is to be regarded as being lawfully in possession under the lease, but, of course, actual possession is not necessary in order to secure the statutory benefits of registration, any more than actual seisin of freehold land is necessary. The first proprietor would not be registered—even with possessory title—until he had given some evidence of being entitled under a lease "in possession" as distinguished from a lease "in reversion," and no question, as to the possession or entry required to constitute an estate for years as distinguished from a mere *interesse termini*, could be raised subsequently.

Where the land was before registration held on a lease for life, and not years, the estate would technically be freehold, and the enactment as to registration being deemed to vest the possession would not strictly apply, unless "possession" be taken in that case to mean seisin. In modern law there is no practical distinction between freehold and leasehold land with respect to the kind of possession required to evidence title, when a leasehold interest has once ceased to be an *interesse termini*; freehold and leasehold land are treated in the Acts and Rules as equally the subject of ownership, the only difference in this respect being in the length of time for which that ownership lasts. Apart from this difference in the duration of the estate, the only practical distinction between

²⁴ 1897, ss. 6 (8), 8 (6); 1903, rr. 243-251.

²⁵ 1875, ss. 13, 35; 1903, r. 55.

registered freehold land and registered leasehold land, as subjects of property, is the existence of the necessary obligations by way of covenant and otherwise, between the proprietor of the leasehold and the owner of the reversion. Registered leasehold land is indivisible, as regards successive estates and legal or equitable estates, just as freehold land is, and is, in the same way, subject to other rights which, in their relation to the leasehold land, are in the nature of incumbrances. The six classes of rights, enumerated in the case of freehold land (*ante*, p. 108), also constitute incumbrances, with but little difference, on leasehold land. But, as mentioned above, the registered leasehold estate is also subject to another class, viz. "all implied and express covenants, obligations, and liabilities incident to" the leasehold estate described in the lease;²⁶ this raises a difficulty similar to that referred to in the case of registered freehold land, where the latter was, before registration, subject to a term of years, viz., whether the registered proprietor, for the time being, of the leasehold land occupies the same relation, with respect to their mutual rights and liabilities, to the owner of the freehold reversion, as before the leasehold land was registered. The express enactment as to the land being subject to the covenants, etc., quoted above, leaves no room for doubt as to its being intended that these mutual rights and liabilities should be preserved; but a question might be raised as to whether, in the event of the first proprietor being registered on the faith of an equitable title only, he—and, in any event, whether his title were legal or equitable, his successors in title, registered proprietors for the time being—stand in substantially the same position as would persons having the legal estate in the term, and being legal assignees of it, supposing the land was not registered. The inconsistency between expressly permitting a person who is only equitable assignee to get what is really a legal title, and impliedly making that title inferior to the title for which it is practically substituted, is so gross as to make it difficult to conceive that the enactments could be interpreted otherwise than as placing the registered proprietor in the same position in relation to the freehold reversion and otherwise, as a person with a technically complete legal assignment of the term. It seems to be in accordance with the principles relating to equitable assignment referred to *ante*, p. 107, as applied to the scheme of the Acts, that the benefit and burden of the covenants, etc., should be vested in the reversioner, and in each successive registered proprietor of the leasehold land, in the same manner as they would be vested at law, by complete legal assignment, with respect to unregistered land. Unless this view of the system is

²⁶ 1875, s. 13; 1903, rr. 53-59.

adopted, the permission for an equitable assignee of a leasehold to become registered proprietor becomes a misleading nullity, and the necessity for seeing that the first registered proprietor, and each succeeding registered proprietor, has the technical legal estate, would be imposed on every purchaser and mortgagee; this would make the provisions for registration of statutory instruments of transfer, and inquiry into the title of the proprietor for the time being only—in the case of absolute titles, completely useless and, in fact, nugatory.

3. As already stated (*ante*, p. 102), the analogies in the general law, by which a registered charge may be best described, furnish a basis for classification of registered charges. At present registered charges in the narrow sense only—excluding registered incumbrances and land charges—are under consideration. These may be divided into: (i.) Mortgage-charge; (ii.) Gross-charge; (iii.) Annuity-charge. This nomenclature is not used in the Acts or Rules, but some such names must be made use of in dealing with the different divisions of charges.

i. The charge which occupies the most prominent position in the system is the charge by way of mortgage, and this is accordingly here called a "mortgage-charge."

The scheme of mortgages over registered land, by means of a charge without vesting in the mortgagee—for any purpose—the ownership of the mortgagor, seems intended to effect the reform recommended by the minority Report of 1870—"doing away with our present anomalous system of mortgages, under which the mortgagee is in law the owner of the land when, in fact, he is only owner of money for which the land is security" (*ante*, p. 16). The view of mortgages taken by Courts of equity, that the mortgagor remains owner of the land, has been adopted in the new scheme. The security is effected by giving the mortgagee statutory powers by means of which he may enforce his security, instead of the legal ownership with limited powers of exercising that ownership.²⁷ The fact that the mortgagee does not take a transfer of the land itself, but only a charge over it, does not seem to make his security a merely equitable mortgage. One essential characteristic of an equitable mortgage in ordinary law is that the aid of the Courts is required by the mortgagee, by reason of his not having the legal estate and so not being able to realize by selling the property.²⁸ This characteristic—the necessity for the aid of the Courts—is absent

²⁷ 1875, ss. 22-27.

²⁸ See Fisher on Mortgages (5th ed.), para. 24, and the two cases there cited. The learned editor of Fisher on Mortgages has recently expressed the opinion that a

statutory registered charge under the Land Transfer Acts is a "pure equitable mortgage": 8 Encycl. Forms, 457. But the passage is hastily written, for a repealed section (1875, s. 81) is referred to.

from a statutory charge which contains a power of sale, for by ss. 26 and 27 a mortgagee under such a charge may foreclose or sell as though the land had been transferred to him. To class a security of this kind among equitable mortgages is to cause unnecessary confusion; the interest of the mortgagee is, it is submitted, a legal interest as being conferred on him by statute,³⁰ and should therefore be classed among legal mortgages.

The estate vested in a proprietor of freehold or leasehold land, and the extent of the title thereby warranted, are the subjects of express enactment. But the interest vested in a mortgagee—or “proprietor of a charge”—is not expressly described; nor is anything expressly said as to the extent to which the title to the charge is warranted, the only enactments on this point being amendments to ss. 22 and 40 of the 1875 Act, by which charges are made subject to the provisions relating to qualified and possessory titles, and a transferee of a charge is not affected by any invalidity in the charge of which he had no notice. As between themselves charges take priority in the order in which they are registered, not the order in which they are created (s. 28). The amendment relating to qualified and possessory titles, above referred to, seems to mean that a charge, like a transfer for valuable consideration (ss. 30–32), is not to affect rights excepted from the registration; and the inference to be drawn seems to be that a charge, duly completed by registration, is in all cases to be regarded as vesting in the proprietor of the charge pro tanto the warranted title which the proprietor of the land could confer. On the other hand, the amendment relating to transfers of a charge, also referred to above, by which a *bonâ fide* transferee of a charge is not to be affected by any invalidity in the charge, might be taken to imply that the original proprietor of the charge does not receive any warranty of title by virtue of his registration. This latter enactment is not, however, conclusive, for “registered dispositions” by the registered proprietor of the land—which must mean transfers and charges—are spoken of in the Acts in such a way as to imply that they stand on the same footing with respect to warranty of title.³⁰ The decision in *Att.-Gen. v. Odell*³¹ is in favour of the original mortgagee or proprietor of a charge having conferred on him a warranty of title similar to that conferred on a transferee of land for value. In that case it was decided that the respondent Odell was entitled to indemnity on the footing of his having suffered loss by being removed from the register. Now Odell did not claim as original proprietor, but as transferee from an original proprietor, of a

³⁰ *Mercer v. Liverpool Ry.*, [1903] 1 K. B. at 661, 662.

³¹ See, for instance, 1875, ss. 49, 98; 1897, ss. 6 (8), 7.

³¹ [1905] W. N. 81. On appeal, the case was heard by the Court of Appeal on the 7th and 8th of December, 1905, when judgment was reserved.

charge; nevertheless s. 40 of the 1875 Act, which might have seemed to be material, was not referred to, and the principle of the decision appears to have been that the warranty of title, which must be implied in order to give the right to compensation, applied to any person who was *de facto* registered as proprietor of a charge. Moreover, even s. 40 only declares that a transferee is not to be affected by an invalidity of which he had not notice, and does not purport to give the transferee the benefit of any warranty of title such as is done in the case of transfers of land. For these reasons, it is submitted that the omission of any express and affirmative enactment as to the interest conferred on an original proprietor of a charge by registration, as to the extent of title warranted where the land is registered with absolute title, and as to the interest and title of a transferee of a charge, is not to be taken as implying that an original mortgagee—proprietor of a charge—is in any worse position than a transferee of land; rather, the proprietor of a charge seems to be entitled to rely on the entries in the register as conferring on him a title similar in degree, as far as possible, to that conferred on a proprietor of land.

The same omission—the want of a specific enactment as to the title of a mortgagee—occurs in the Land Registry Act, 1862; but there is some actual authority that the proprietor of a mortgage, under that Act, has as good a title *pro tanto* as the proprietor of land. It has been decided that the purchaser from a mortgagee, whether the mortgage were created before or after the first registration of the land, has as good a title as if he had purchased direct from the proprietor of the land.³² The Australian Statutes also expressly warrant only the title of the proprietor of land; but it has never been suggested that the title of a mortgagee is not equally secure, and the view that the title of a mortgagee is equally secure has been taken by the Privy Council.³³

The proprietor of a mortgage-charge, or mortgagee, may be said to have a registered interest, though not an estate in the land; this statutory interest consists—by express enactment—of four groups of rights,³⁴ viz. (a) the benefit of covenants by the proprietor of the land, or mortgagor, for payment of the principal sum and interest, and—in the case of leasehold land—to pay the rent, etc., and observe the lessee's covenants; (b) power to enter into possession of the mortgaged land; (c) right to foreclose; (d) power to sell and transfer the mortgaged land. These rights and remedies will be dealt with in detail in a subsequent chapter. For the present it is

³² See ss. 20, 63 of the 1862 Act; *In re Richardson* (1871), L. R. 12 Eq. 398, 13 Eq. 142; *In re Winter* (1873), L. R. 15 Eq.

156.

³³ *Gilbs v. Messer*, [1891] A. C. at 254.

³⁴ 1875, ss. 23–27; 1897, s. 9 (2).

intended to make some general observations only on mortgage-charges in order to show the nature of the interest vested in the proprietor of the charge, or mortgagee.

The interest of the mortgagee is, by the Acts, a "charge" upon the "land" of the proprietor; it is, however, something more than a charge as ordinarily understood in English law, for this nearly always carries with it the notion of a merely equitable right, liable to be defeated by the legal estate getting into the hands of a stranger. The interest of a registered proprietor of a charge, however, being statutory, is certainly a legal interest—in the sense of being completely valid against the world (*ante*, p. 115); and, as the registered fee simple of a proprietor of land is a legal interest of the same kind whether he be registered with absolute or possessory title, and notwithstanding that he has not the technical "legal estate," so the interest of the proprietor of a charge is a legal interest of the same kind whether the land be registered with absolute or possessory title, and whether the proprietor of the charge have the technical legal estate or not. And, like the estate of the registered proprietor of the land, the registered interest constituted by the charge is a composite interest, having properties and characteristics analogous both to legal and equitable rights under the general law.³⁵ The registered mortgage-charge is, in fact, as nearly as possible identical in its nature with heritable bonds and dispositions in security in Scottish law, mortgages in South African law, and mortgages under the Australian system. A heritable bond in Scottish law is a security by which the land is pledged or burdened, but not transferred;³⁶ a mortgage in South Africa, under the Roman-Dutch law, is a complete and legal burden or charge, as distinguished from an alienation of the dominium;³⁷ a mortgage under the Australian system is a complete legal interest by way of charge, as distinguished from a transfer of the ownership of the land.³⁸

Although a mortgage-charge is not an assignment or conveyance of the mortgagor's estate, yet it would operate as a complete charge over everything which he could have assigned as being included in his "land"; for instance, all rights, privileges, and appurtenances"³⁹

³⁵ See *ante*, p. 93, note 21. The composite nature of the statutory registered mortgage under the Australian system is fully set out in *Payne v. Reg.* (1901), 26 V. L. R. at 752.

³⁶ Bell's Principles (8th ed.), para. 900. And see *Lord Advocate v. Moray*, [1905] A. C. at 548.

³⁷ *Josef v. Mulder*, [1903] A. C. at 191, 198.

³⁸ *Gibbs v. Messer*, [1891] A. C. at 254;

and see the enactments and cases cited in Hogg's Aust. Torrens Syst. 941, 942, notes 37, 38.

³⁹ 1875, ss. 7, 13, 30, 35; 1903, r. 254. And see the New Zealand case of *Dunbar v. Deal* (1888), 7 N. Z. R. 9, where it was held that the mortgagee had the benefit of an equity over a covenant running with the land, which benefit the mortgagor could not defeat.

which are vested in him as proprietor of the land, including, it would seem, the benefit of covenants running with the land.

The general analogy of a registered charge to an Irish judgment-mortgage has been mentioned *ante*, p. 103. The analogy is, of course, most complete as regards the mortgage-charge. The scheme of the Irish Acts is that a judgment creditor, on filing an affidavit of his debtor's ownership of land, obtains a security over the land mentioned in the affidavit, as though the debtor had executed a mortgage of it in favour of the creditor. By s. 7 of the Judgment-mortgage (Ireland) Act, 1850, the registration vests in the creditor all the estate of the debtor in the land subject to redemption, as though it had been conveyed to him subject to redemption, and by s. 5 of the Act of 1858 entry of a memorandum of satisfaction at once reverts in the debtor the legal or other estate in the land affected by the registration. The judgment-mortgage resembles the mortgage-charge in that it constitutes a complete legal charge over the land without actual conveyance of any estate in the land, the charge being vacated by a mere entry of satisfaction; it differs from the mortgage-charge inasmuch as it purports to derive its efficacy from the supposed effect of an implied conveyance of the debtor's legal or other estate in the land. This difference does not affect the analogy as much as might be thought. Under ss. 26 and 27 of the 1875 Act the proprietor of the mortgage-charge is entitled to foreclosure and sale "as if the land had been transferred to him by way of mortgage subject to a proviso for redemption," and is also entitled to transfer the land "as if he were the registered proprietor of such land." Each security is in reality effected solely by the operative effect of the relative statute, a legal interest by way of charge or incumbrance being created, and necessary powers of realizing being conferred on the mortgagee.

One probable result of the statutory characteristics of a mortgage-charge is that it will be considered to be governed by the *lex loci sitæ*, rather than by the *lex domicilii* of the owner, much as Scottish heritable bonds are considered, for purposes of deciding by what law they are governed, to be immovable property.⁴⁰ The interest of the owner is an indivisible one, primarily evidenced by the entries on the register, and not by the charge certificate; the analogy of a debt, evidenced by deeds which can be carried out of the jurisdiction, will not therefore apply.⁴¹

The extent to which rights, usually secured to mortgagees of

⁴⁰ See *In re Fitzgerald*, [1904] 1 Ch. 573, 583.

⁴¹ See the Australian case of *Ivey v. Commissioners of Taxation* (1903), 3 S. R.

(N. S. W.) 184; *Payne v. Rex*, [1902] A. C. at 560. And contrast *Commissioner of Stamps v. Hope*, [1891] A. C. 476, where the land was subject to the general law.

unregistered land by the possession of the legal estate, are secured to the registered proprietor of a statutory mortgage-charge, forms a test of the practical value of the new statutory charge, and illustrates its general nature. The chief reason for the legal estate, in mortgages of unregistered land, being considered necessary for the protection of the mortgagee, is that he may be able to confer it on a purchaser when selling under his power of sale, and may be able to get the benefit of any covenants running with the land which may have been entered into with the mortgagor by other persons. The principle of conferring on a mortgagee statutory power to vest the mortgagor's legal estate in a purchaser, without having it vested in himself, was introduced by Lord Cranworth's Act,⁴² though the corresponding provisions in the Conveyancing Act, 1881, have been differently construed.⁴³ One practical objection to a mortgagee of unregistered land not taking a conveyance of the legal estate from his mortgagor is that, unless this be done, there is a risk of the legal estate being vested in some one else to the detriment of the mortgagee. But there can be no doubt as to the efficacy of the provisions in the 1875 Act for enabling the registered proprietor of a mortgage-charge to pass to the purchaser, on sale under the charge, the estate of the registered proprietor of the land;⁴⁴ and since the registered proprietor of the land cannot, by any transaction with the land, defeat the rights of the registered proprietor of the charge, or affect the title of a duly registered purchaser from the latter, the practical objection above mentioned, to a mortgagee of unregistered land leaving the legal estate in the mortgagor, will not apply to the case of a charge on unregistered land; the registered proprietor of the charge cannot be injured by leaving the registered estate vested in the registered proprietor of the land, so far as any acts of the latter are concerned. Of course, all transactions, in the case of possessory title, are subject to any adverse rights existing at the time of first registration, but this does not affect the argument as to the necessity or non-necessity of vesting in the registered proprietor of a charge any actual estate of the registered proprietor of the land; if the technical legal estate is in the registered proprietor of the land, the registered proprietor of the charge has nothing to fear from it, and if the legal estate is not in the registered proprietor of the land, that is a matter of title prior to first registration as to which the registered proprietor of the charge will have to satisfy himself.

⁴² 23 & 24 Vict. c. 145, ss. 11, 15; Conv. Act 1881, ss. 19 (1), 21 (1). See *Hiatt v. Hillman* (1871), 25 L. T. 55; *In re Solomon and Meagher's Cont.* (1889), 40 Ch. D. 508.

⁴³ *In re Hodson and Howe's Cont.* (1887), 35 Ch. D. 668.

⁴⁴ See the cases under the Land Registry Act, 1862, cited *ante*, p. 116, note 32.

The argument, of course, proceeds on the view that the registered estate is not identical with the legal estate (*ante*, p. 90).

The other reason mentioned, for conveying the mortgagor's legal estate in unregistered land to a mortgagee, is that the mortgagee may be in the position of a legal assignee with regard to covenants running with the land. Two illustrations may be given: (a) Where freehold ground rents—*i.e.* freehold land subject to long leases—are mortgaged, and the mortgagee desires to take advantage of the condition for re-entry, etc., contained in the leases, as against the lessees or their assigns; (b) Where leasehold land is mortgaged—either by assignment or sub-demise—and the mortgagee desires to take advantage of the covenants in the lease, as against the lessor or reversioner for the time being of the mortgagor. In these cases the mortgagee is not considered to have, where the land is unregistered, a proper and effectual remedy—in the first case against the lessees, in the second case against the reversioner—unless he has the legal estate vested in himself. What is the position of a registered proprietor of a mortgage-charge over registered land under these circumstances? And, to put the strongest case, let it be assumed that the registered proprietor of the land is registered with possessory title and has in each case given a statutory charge in the prescribed form without any additional stipulation, and without purporting to give any conveyance of the legal estate. The question is analogous to the question as to the rights of a registered proprietor of land, without the legal estate, against the lessee of a preceding unregistered owner of the freehold, (*ante*, p. 107); it is, however, much more difficult to deal with satisfactorily, since the registered proprietor of the charge is not in the position of an equitable assignee, in the absence of some express stipulation in the instrument of charge itself. S. 25 of the 1875 Act authorizes the mortgagee to enter on the land charged or into receipt of the rents and profits, subject to the liabilities of a mortgagee in possession. The mortgagee could, no doubt, under this statutory power, take possession and collect rents from tenants in the ordinary way; but if it were desired to exercise any specific power such as re-entry for breach of covenant, etc., against the mortgagor's lessee, the mortgagee might have to join the mortgagor as a party to any necessary action. The practice of inserting in the statutory charge a grant of the legal estate to the mortgagee has been adopted in order to get rid of any necessity for joining the mortgagor, and to enable the mortgagee to take advantage of the covenants with the mortgagor as the latter's assignee. This practice, however, seems to be an extremely unsatisfactory one and likely to lead to great complication in title;

moreover, it yet remains to be seen whether the dicta in *Capital and Counties Bank v. Rhodes*,⁴⁵ as to the necessity for the technical legal estate being in the mortgagee, will be upheld when the question really comes up for decision, and whether the insertion of a grant of the fee simple in a statutory charge is properly allowed by the registry. It is submitted that it would be more in accordance with the principles of the system and the wording of the rules relating to the form of statutory instruments,⁴⁶ if the addition of a grant in fee or of the term were not made to the statutory charge. If in any particular instance, such as those now under consideration, it were desired to give the mortgagee power to sue on, or otherwise to take advantage of, the covenants, etc., of another person with the mortgagor, it is submitted that an express authority to that effect—as by a power of attorney clause—could be inserted in the instrument of charge, and would answer the purpose better than a grant of the legal estate; or the rights of the mortgagor to sue on covenants might be assigned, as choses in action, to the mortgagee and notice given to the covenantors.⁴⁷ Under very special circumstances, the mortgagee might, of course, take a statutory transfer of the land which would effectually vest the mortgagor's fee simple or leasehold estate in him. It is also submitted that the provisions of the Conveyancing Acts, which enable a mortgagor who has not the legal estate in unregistered land to sue on, and take advantage of, the lessee's covenants and the conditions of re-entry in a lease, will enable a mortgagee of registered land to do the same when entitled to the income of the land leased.⁴⁸ Notwithstanding that, as a matter of technical title, the mortgagee will not have any such reversion as he would have in unregistered land upon a lease being created by the mortgagor under s. 18 of the Conveyancing Act, 1881, he would—as “reversioner” under s. 10—be entitled to disregard and nullify any attempt by the mortgagor to accept a surrender of the lease.

A mortgage-charge itself may be mortgaged, and a registered sub-charge created,⁴⁹ implying the same covenants and powers as a charge over land. The sub-mortgagee appears to be in the same position, as regards his remedies against the original mortgagor, as

⁴⁵ [1903] 1 Ch. at 647, 654. The question did not arise for decision in this case, because it was held that the Bank had got in the legal estate from Rhodes.

⁴⁶ See 1903, rr. 97, 100, 158. These rules correspond to rr. 106 and 107 of 1898, referred to in *Capital and Counties Bank v. Rhodes*, *supra*, at 640, but have been considerably modified.

⁴⁷ See *King v. Victoria Insurance Co.*, [1896] A. C. at 254; *Manchester Brewery v. Coombs*, [1901] 2 Ch. at 619. And see

Ocean Accident Corporation v. Ilford Gas Co., [1905] 2 K. B. 493, as to a mortgagee without the legal estate standing in the shoes of the mortgagor for the purpose of suing on the latter's covenants.

⁴⁸ Conv. Act, 1881, s. 10; *Municipal Perm. Build. Soc. v. Smith* (1888), 22 Q. B. D. 70, 73. It has been held that a mortgagor cannot accept a surrender of a lease which he has created under s. 18; *Robbins v. Whyte*, [1906] 1 K. B. 125; p. 235 *post*.

⁴⁹ 1897, s. 22 (6) (c); 1903, rr. 178–181.

though he had received a complete assignment of the original charge, including the power to sue the mortgagor.

ii. Although the group of sections in the 1875 Act relating to registered charges (ss. 22-28) is headed "mortgage of registered land," yet the provisions of these sections—even including foreclosure—apply equally to a charge of any gross sum of money, whether by way of mortgage or otherwise; provisions relating to interest, etc., may be negatived. The nature of a charge by way of mortgage, or mortgage-charge, and a charge of a gross sum not by way of mortgage, or a gross-charge, is precisely the same; under the general law, a mortgage would usually be effected by a conveyance of the whole of the mortgagor's estate, and a gross sum such as a portion would be secured by the creation of a term of years. The creation of a gross-charge—a charge of a gross sum of money simply, without interest, and without powers of sale or foreclosure, or covenants for payment—would answer to the creation of a term of years for the purpose of raising money at some future time; when it became necessary to raise the money, it would, of course, be necessary—assuming the money to be raised otherwise than by sale of part of the land—either to create a mortgage-charge with all the usual provisions securing repayment to the mortgagee, or an annuity-charge—perpetual or for a definite number of years—as consideration for the gross sum received.

iii. An "annuity-charge" is authorized by s. 9 (3) of the 1897 Act. In terms, all the provisions of the Acts relating to registered charges are made applicable to the annuity-charge; as a matter of practice, many of these provisions could not well be applied, and as a matter of construction only it is probable that the practical view of excluding some of those provisions would prevail. The juridical nature of the annuity-charge, and of the other registered charges, is, however, the same. The provisions of s. 44 of the Conveyancing Act, 1881, will apply to the annuity-charge; these provisions, with the provisions of the Land Transfer Acts, will enable the proprietor of an annuity-charge to have all the practical advantages enjoyed by the owner of a rent-charge under the general law. Practically, a perpetual annuity charged on land is undistinguishable from a rent-charge. Juridically, there is a strong tendency in modern law towards complete assimilation between a rent-charge and a perpetual annuity charged on land; in the case of registered land, it is not only possible to create, by means of an annuity-charge, an interest having precisely the same rights of property as an ordinary rent-charge, but there appears to be no other method of doing so in such a way as to secure with certainty the benefits of the registered title of the proprietor of the land.

4. A statutory charge is necessarily created over registered land. An incumbrance, created before any application has been made to register the land, may also be registered when the land has been placed on the register.⁵⁰ The provisions on the subject are meagre; their intention appears to be to place these "incumbrances" on as nearly as possible the same footing as statutory charges. The incumbrancer's title must be proved, and this would seem to indicate that only a qualified or absolute title would be registered, though the practice of the registry seems to be to register possessory titles also;⁵¹ being created before registration of the land, the title will not necessarily fall into the same class with the title to the land, as is the case with charges created after registration under s. 22 of the 1875 Act. The provisions for registration of these incumbrances, and especially the provision for rectification of the register, in the event of a sale of the land being made by a mortgagee under such an incumbrance (r. 151)—who will, of course, usually have the legal estate vested in him—illustrate the scheme of the system as to registration with possessory title being in effect the registration of the land in the name of the apparent owner, leaving persons with paramount rights to come in and get themselves placed on the register; the position and value of the legal estate is also illustrated, as being in effect turned into a right of entry or restitution, which is a completely secured right of property enforced by appropriate alterations being made in the register.

5. A "land charge" is only mentioned, and then only twice, in the 1903 Rules.⁵² Although a land charge is a legal and completely valid incumbrance on unregistered land simply by virtue of registration under the Land Charges Acts, 1888 and 1900, the proper inference from r. 170 appears to be that, where the land is registered, the land charge, until registered as charges under the Land Transfer Act are registered, has no greater effect than an unregistered statutory charge under s. 22 of the 1875 Act would have. Land charges appear to be placed on the same level as registered charges under s. 22 with respect to warranty of title; when the land is registered with possessory title it may be important to register the land charge under the general Acts of 1888 and 1900, although if the title is absolute, registration on the register of the land itself under the Land Transfer Acts would seem to be sufficient.

By r. 170 the whole of the rights and remedies given to proprietors of other registered charges are negatived in the case of registered land charges; any remedies expressly or impliedly conferred by the statute which creates the charge are still open to

⁵⁰ 1897, s. 22(6)(c); 1903, rr. 175-177. note preceding r. 175.
And see r. 151.

⁵² 1903, rr. 1, 170.

⁵¹ See Brick and Shel. (2nd ed.) 427,

the proprietor of the charge, and the ordinary remedy is sale or mortgage under the order of the Court. In this respect a land charge, even when registered, resembles an equitable charge; but like other registered charges, and all charges created by statute, the interest of the charge owner is so far legal that it is independent of any transaction with the land itself, and cannot be defeated by any change of ownership.

The definition of a land charge in r. 1 follows the definition in s. 4 of the Land Charges Act, 1888, with the addition of the words "whether upon the application of any person or not." The effect of this addition is that a charge of moneys on land in invitum of the owner, by virtue of a general statute, is not completely valid in the case of registered land without registration on the register of the land, although in the case of unregistered land it would, in most cases, be completely valid without any registration at all under the general Land Charges Acts of 1888 and 1900.⁵³ A charge under s. 31 of the Agricultural Holdings Act, 1883, is also, by s. 3 of the Tenants Compensation Act, 1890, made a "land charge" within the meaning of the Land Charges Act, 1888, but is not mentioned in r. 1.

The definition excludes charges created by statute otherwise than for expenditure by some person (including a public body); a charge, however, under s. 35 of the Land Drainage Act, 1861, is an exception, and is expressly included in the definition. Such charges, therefore, as are directly created by taxing Acts—as death duties—and are charged on land, irrespectively of any expenditure by the owner or other person, would not be "land charges" within the definition; but the charge vested, by s. 9 (6) of the Finance Act, 1894, in a limited owner who pays estate duty, would be a land charge and would, apparently, require registration as such to be completely valid.⁵⁴

The definition speaks of "a rent or annuity . . . charged . . . upon land," thus treating rent-charges and annuities alike, though rent-charges are *primâ facie* realty and annuities personalty. There is some ground for treating annuities charged on land as substantially identical for many purposes with rent-charges. In some statutes the sum charged on the land is expressly made personalty, as for instance in s. 35 of the Land Drainage Act, 1861.

⁵³ See *Reg. v. Vice-Registrar* (1889), 24 Q. B. D. 178.

⁵⁴ See *Lord Advocate v. Moray*, [1905] A. C. 531. The reasoning in the judgments, with respect to the relation between charges imposed by general statutes and the Scottish system of registration, seems

to apply exactly in principle to the English system of registration under the Land Transfer Acts; but the Finance Act, 1894, is earlier in date than the Land Transfer Act, 1897, and registered land is by the latter Act (s. 13) in some cases released from the charge of estate duty.

SECTION 2.—ESTATES AND INTERESTS PROTECTED BY REGISTERED NOTICE.

There are eight classes of interests which may be protected by means of a registered notice: (1) Leases; (2) Estates in dower or by the curtesy; (3) Interests which are the subjects of a caution; (4) Liens, or mortgages by deposit of certificate; (5) Conditions restrictive of the user of land; (6) Rights enumerated in s. 18; (7) Pending transactions the subject of a priority notice; (8) Interests expressly excepted from registration under a qualified title.

In these eight classes the "notice"—though not always so called—which is "registered" has different characteristics and effects, and each class must therefore be treated separately for the present. The feature common to all is that they depend chiefly for their security as rights of property, not so much upon being registered or entered on the register, nor upon being restrictions on the proprietor's powers of alienation, as upon the effect of the doctrine of notice directly and primarily.

1. By s. 50 of the 1875 Act the leases which may be protected by registered notice are leases: (i.) for a life or lives; (ii.) determinable on a life or lives; (iii.) exceeding twenty-one years; (iv.) where the occupation is not in accordance with the lease. In each case an agreement for a lease is on the same footing as a lease. This enumeration of leases should be compared with the enactments contained in ss. 11 (as amended) and 18 (7).

i. Land held under a "lease for life" is, of course, held for a freehold estate in theory. The classification of leases for life or lives with leasehold, and not freehold, land is referred to *ante*, p. 53. Such a lease, or an agreement for one—not being by way of mortgage, and, apparently, not being a mere *interesse termini*—confers the right to have the land registered as leasehold land (s. 11). Where, however, the lease is merely protected, the nature of the interest conferred by it differs considerably from that conferred by the ownership of registered leasehold land.

The lease itself is not registered, but the "notice" is registered. This "registration" of notice consists in having the fact of the existence of the lease, together with short particulars of its contents, entered on the register. This kind of registration differs, on the one hand, from the registration which records property, proprietorship, or incumbrance, on the register, so as to warrant the correctness of the facts implied by these entries; it differs also, on the other hand, from the registration of a caution or other similar document, which is not intended to remain permanently on the register. The

registration of notice of a lease does not purport to give any warranty of title; nevertheless it does, in fact, do much more than merely state the existence of a claim. In the first place, a formal application for the registration of notice must be made, and this must be supported by production, or other sufficient evidence, of the lease; in the next place, notice will not be registered unless either the proprietor of the land consents, or an order of the Court is made directing the registration.¹ In this way the authenticity of the lease is practically established, and the fact of the registration is certified by a note being made on the lease itself when returned to the lessee after entry of the notice is completed, thus making the lease in some respects analogous to a land certificate. The effect of the registered notice is that registered proprietors of the land, and persons deriving title through them, are "deemed to be affected with notice" of the lease "as being an incumbrance on the land" (s. 50). This seems to mean that the lease is made an incumbrance on the land, and that the registration of the notice is to prevent the technical non-registration of the lease being set up against the lessee; the difference between the language of s. 50 (relating to leases) and s. 52 (relating to dower and curtesy) may cause some difficulty, for in the latter section the estate of which notice is to be registered is to "be an incumbrance appearing on the register," but the meaning of both sections seems to be the same with respect to the effect of registration of notice.

Notwithstanding that leases may thus be made "incumbrances," they are not incumbrances as the word is used in r. 175, which provides for the registration of proprietorship in "incumbrances" existing at the time of registration of the land; the collocation and context of r. 175 seem to indicate clearly that only incumbrances for securing payment of money by way of mortgage are there referred to. An ordinary beneficial lease, in existence at the time of the first registration of the land, could have been noted as an incumbrance under the provisions of ss. 5 and 11, and would not therefore require to be the subject of any further registered notice under s. 50; moreover, the repealed words in s. 50 show that the registered notice was only intended to apply to leases created after first registration. Now, however, that the words referred to are repealed, there seems no reason why notice of a lease, in existence at the time of first registration but omitted to be entered as an incumbrance at the time of first registration, should not be the subject of a registered notice under s. 50; but the proprietorship of such a beneficial lease could only be directly registered by the lease being made "leasehold land."

¹ 1875, ss. 50, 51; 1903, rr. 201-206.

The case of two competing leases executed by the same proprietor is not covered by the words of s. 50, which only affect with notice proprietors, and those dealing with them, who propose to create an interest in the land in the face of a registered notice of a lease. A lease, of which notice is registered, will thus gain priority over any registrable transaction not registered, or any unregistrable transaction not completed, at the date of registration of the notice; but will not necessarily gain priority over an unregistrable transaction already completed.

With respect to the nature of the interest conferred by a lease of which notice is registered, it is, as pointed out above, expressly made an incumbrance on the registered land. This is of some importance juridically, as being in accordance with the scheme of the system in making the ownership of the land an indivisible estate, and as showing the tendency towards the allodial—and divergence from the feudal—view of land ownership. Practically, the merely naming a lease an “incumbrance” has not, in itself, any effect on the rights of the lessee; as indicating a change in legal outlook it may, however, have some incidental effect.

The placing of agreements on the same footing as actual leases points to the intention to raise the equitable estate to the level of the legal estate, or amalgamate the two, somewhat after the analogy of the registered estate. So far as priority is gained for a lease or agreement, that priority will not, it would seem, be disturbed by the fact that the prior lease may be equitable, and the subsequent lease or other interest legal—in the sense that these terms are used in regard to unregistered land. But as between two competing leases, neither protected by registered notice, any intention there may be to amalgamate the legal and equitable estate does not appear to be expressed with sufficient clearness to justify the complete abrogation of rights at present conferred by possession of the legal estate, where it is free from all notice of equitable rights. The peculiar position and rights of the holder of a technical legal estate in registered land may have to be considered.

No provision is made for recording in any way on the register transactions with a lease protected by registered notice. Consequently, apart from special circumstances, all such transactions must necessarily be governed, as to priority, by the actual date of the execution of the instruments evidencing them. It is obvious that, as time goes on, and particularly in the case of land registered with an absolute title where the first proprietor had not the legal estate, the possession of the legal estate will become more and more difficult to prove; unregistered estates and interests will probably, by insensible degrees, approximate to the unified condition

of registered estates and interests, and cease to be liable to defeazance by an unexpected technicality in an adverse claim.

ii. Leases "determinable on a life or lives" may, so far as they are in the nature of leases for lives, be considered as included under the last preceding head; so far as they are in the nature of leases for years, they may be considered as included under the next succeeding head.

iii. Leases "exceeding twenty-one years" evidently mean leases originally granted for a term of twenty-one years. Occupation leases "not exceeding twenty-one years" require no registration of notice for their protection (s. 18). The distinction between a lease for life, which is a freehold estate, and a lease for years, which is a chattel interest, with respect to the necessity for actual entry (unless the Statute of Uses applies) before the *interesse termini* becomes an estate for years, seems to be the only distinction of any practical importance between the two kinds of leases. Subject to this distinction, the remarks above made on the registration of notice of a lease for life apply equally to leases for years.

iv. Leases "where the occupation is not in accordance with" the lease may be either leases by way of mortgage, or reversionary leases. Any lease or agreement for lease, whatever the length of the term—and, apparently, whether for life or years—which is not consistent with the actual occupation of the land, must be protected by registered notice in order to be valid against the owner of the land. The remarks above will apply to these leases. It is specially provided (r. 202) that where the lease is by way of mortgage only, the land certificate of the lessor is to be produced and endorsed with a notice similar to that entered on the register. And the proprietorship of such leases, *quâ* mortgages, could be registered under r. 175—if the lease had been created before first registration of the land—and so be dealt with like registered mortgage-charges.²

2. Estates in dower, and estates by the curtesy, are made "incumbrances" on the land of the proprietor to which they relate, by registration of notice, as in the case of leases; no consent or order of Court is required, but a formal application is made, and evidence of title produced, to the registrar.³ The interests of persons thus protected appear to be on the same footing as interests under similarly protected leases.

The interest of a tenant by the curtesy in the wife's separate property would not now arise until his wife's death, though prior to 1883 it was otherwise.⁴ Since a tenant by the curtesy has, in the

² 1875, s. 40; 1903, r. 177.

³ 1875, s. 52; 1903, r. 207.

⁴ See *Wolst. Conv. and S. L. Acts* (9th

ed.), 281, 282; and *cf.* *Settled Land Act*, 1884, s. 8. Under s. 44 of the 1875 Act (now amended by 1897, sched. 1) the

case of settled freehold land, a power of sale over the land, he might also become registered proprietor of the land, and thus acquire the fee simple subject to restricted powers of ownership, etc., as in the case of other fiduciary proprietors; as regards tenants by the curtesy, "settled land" includes land as to which the wife has died intestate.⁵ S. 6 of the 1897 Act does not seem to include the case of a person who has only the powers of a tenant for life, and is not himself a tenant for life as defined by the Settled Land Acts. But s. 8 of the Settled Land Act, 1884, appears to place the tenant by the curtesy exactly in the position of a tenant for life within the statutory definition, though under s. 58 of the Settled Land Act, 1882, he would only have the powers of such a tenant for life. Where the land is not the wife's separate property, it is possible that the precise and express provisions of 1875, s. 44, are not overridden by the general provisions of 1897, s. 6, and the Settled Land Acts.

3. Interests which may be the subject of a caution appear to include every kind of right which can be called an interest in registered land, or in a registered charge, except leases, agreements for lease, estates in dower, and estates by the curtesy, in respect of which notices under ss. 50 and 52 have been registered, and perhaps other interests which are fully protected by express enactment. Interests created under s. 49 (with the exception of leases) form the principal class of interests intended to be protected by a caution, but s. 53 suggests other interests, such as a judgment creditor's interest, which may be the subject of a caution. The only limit to the range of possible interests appears to be that they should be interests, actual or alleged, relating to the land, or a registered charge on it, enforceable by the Courts, and not mere expectations or purely personal obligations. The right to lodge a caution in respect of an interest in registered land is thus quite different from the right to lodge one against entry of the land on the register (*ante*, p. 75). The word "interest" is one of the widest that can be used, and has been said by Lord Eldon to be "a right in the property, or a right derivable out of some contract about the property."⁶ Cases on what is an "interest" in land under the Statute of Frauds may afford useful analogies.⁷ It can hardly be doubted that any right which would, in the eyes of a Court of equity, constitute an "interest" in the land, would be sufficient to support a caution; and now that covenants have been definitely held to be capable of running with the land in equity, as interests

husband could only be registered as co-proprietor.

⁵ 1875, s. 68; 1897, s. 6 (1, 10); Settled Land Act, 1882, ss. 2 (1, 5), 58 (1) (viii.); Settled Land Act, 1884, s. 8.

⁶ *Lucena v. Craufurd* (1806), 2 B. & P. N. R. at 321, 6 B. R. at 708, referring to insurable interest.

⁷ See Dart, V. & P. (7th ed.), 218 *et seq.*

actually annexed to and inherent in the land,⁸ any covenant which, in the case of unregistered land, would run with the land in equity, would clearly support a caution.⁹ Where the covenant cannot be said to be one running with the land at all, the mere fact that the covenantee is entitled to an injunction against a threatened breach of it can hardly make the covenantee's right an "interest" in the land properly speaking; but since the covenantor's assigns with notice might be bound, so far as the covenantee himself was personally concerned, even though the covenantee's assigns could not enforce the covenant,¹⁰ there seems some ground—especially in view of the amendment of s. 84 by the 1897 Act with respect to restrictive conditions "capable of affecting assigns by way of notice"—for the view that a covenant like the one in *Formby v. Barker* might be held entitled to the protection of a caution. The probable limits to the meaning of the word "interest" can only be indicated with any clearness by means of illustrations. Thus, the mere expectation of succeeding to the land, or to a share in the proceeds of its sale, on the death of the proprietor, would not support a caution; nor would an alleged interest which was void for illegality, as by infringing the rule against perpetuities.¹¹ The enactment in s. 53, as to leases, etc., suggests that interests which are fully protected by the express provisions of the Acts would not support cautions; and since a caution is calculated, and indeed intended, to hamper the free alienation of the land by the proprietor, it seems reasonable that, where land can only be dealt with subject to existing rights, the owner of those rights should not be allowed the further right of lodging a caution. Thus, a lessee under a short occupation lease should not be allowed to hamper the lessor's right to deal with the land subject to the lease.¹²

⁸ See *London & S. W. Ry. v. Gomm* (1882), 20 Ch. D. 562; *Rogers v. Hosegood*, [1900] 2 Ch. 388; *In re Nisbet & Potts' Cont.*, [1905] 1 Ch. 391. And as to their being now no substantial distinction between an enforceable legal, and an enforceable equitable, covenant, see *Formby v. Barker*, [1903] 2 Ch. at 549.

⁹ It was held in *In re Drew's Estate* (1866), L. R. 2 Eq. 206, that a covenant between two adjoining landowners, relating to the repair of a common road and intended to bind successive owners, was not such an interest in the land as could be entered on the register under the Land Registry Act, 1862; this case seems to be overruled by *Rogers v. Hosegood*, *supra*.

¹⁰ This is illustrated by the facts in *Formby v. Barker*, [1903] 2 Ch. 539, where, however, the land was not registered. With this case may be usefully compared the New Zealand case of *Staples v. Corby* (1899, 17 N. Z. R. 734; 1900, 19 N. Z. R.

517), where the covenantees themselves were held entitled to an injunction against an assign with notice of the covenant, but were held not to be entitled to have notice of the covenant entered on the register, by caveat or otherwise. In *Formby v. Barker*, the Court of Appeal thought that the defendant (an assign with notice of the covenant) could have been restrained from breach at the suit of the covenantee himself in his lifetime.

¹¹ See the Australian cases: *In re Annand* (1891), 17 V. L. R. 108; *Kauri Timber Co. v. District Land Registrar* (1902), 21 N. Z. R. 84. Apparently a husband presumptively entitled to curtesy could not enter a caution to protect this possible right; see *Hope v. Hope*, [1892] 2 Ch. 336.

¹² See the Australian cases: *In re Clark and Harvey* (1868), 2 S. A. R. 191; *Rutu Pehi v. Davy* (1890), 9 N. Z. R. at 151.

Interests which are likely to require, and to be allowed, the protection afforded by a caution are such as the following:—

A purchaser's interest under a contract for sale;

An informal agreement for mortgage where the land certificate is not deposited;

A right to the proceeds of sale of the land;¹³

A claim to have the register rectified by the entry of the claimant as registered proprietor;¹⁴

The interest of the trustee in bankruptcy of the registered proprietor;¹⁵

A claim by a reversioner to prevent the transfer of registered leasehold land in breach of a covenant not to assign without consent;¹⁶

Rights arising under leases, etc., covenants relating to the user of the land, etc., where formal notice or restrictive conditions, as the case may be, have not been registered.

The result of lodging a caution is that the cautioner receives an intimation of any intended dealing by the proprietor with the land or charge against which the caution is lodged, and is thus afforded an opportunity of taking suitable proceedings to enforce his claim or rights; if, after receiving such intimation, he does not take steps to prevent the intended transaction, the caution becomes inoperative.¹⁷ It appears to be only dealings "on the part of the registered proprietor" which are thus affected, since the words quoted occur only in s. 53, and not in s. 57 (relating to inhibitions), but possibly the language of all these sections is not to be construed with the exactitude which this distinction implies, as pointed out in *Br. and Shel.* (2nd ed.), 199, 200. A caution is thus a mere temporary suspension of the right of the proprietor to deal with the property registered in his name, and has no other direct effect—either on the nature of the interest put forward by the cautioner, or in restricting the property rights of the registered proprietor. But the existence of a caution on the register serves to afford notice to persons who propose to deal with the proprietor, and who search the register, of the existence of claims which they will neglect at the

¹³ See the New Zealand cases: *d'Albedyhill v. d'Albedyhill* (1885), 3 N. Z. S. O. 391; *In re Biefeld* (1894), 12 N. Z. R. 596.

¹⁴ See the Australian case: *In re Hamilton* (1902), 2 S. R. Eq. (N. S. W.), 117.

¹⁵ See the Australian case: *In re Palmateer* (1890), 16 V. L. R. 793.

¹⁶ See *McEacharn v. Colton*, [1902] A. C. 104, on appeal from South Australia. The lease containing the covenant against assignment without consent was registered, and it might have been thought un-

necessary to lodge a "caveat," since the registry officers should in any case have refused registration of the transfer on assignment. But it was claimed that there had been no breach of covenant. Under the English Acts and Rules (r. 62), estates and interests created without proper consent are excepted from registration; but under special circumstances, such as in the case above cited, the English Courts might well take a similar view as to the reversioner's right to lodge a caution.

¹⁷ 1875, ss. 53-56; 1903, rr. 226-233.

being afterwards postponed to them. The mere omission to enter the caution in the register, and thus fail to get actual notice of the caution, does not, it is submitted, confer any advantage over a person who searches and gets actual notice, for this would be to place a premium on wilful neglect to search the register under a system which makes the register the proper evidence of the state of a title, and expressly contemplates that cautions and other notices and restrictive entries should be entered and searched for.¹⁸

The entry of the caution, however, by keeping the property in statu quo for a short time until conflicting claims have been allowed an opportunity of assertion, also operates as a kind of interim statutory injunction. The much greater ease with which a registered proprietor of registered land can defeat equitable rights, unprotected by any entry on the register, than can an ordinary owner of unregistered land defeat similar equitable interests, makes injunction a far more necessary and appropriate remedy than it would otherwise be; and in the same way the statutory remedy of lodging a caution appears to be justifiable under circumstances analogous to those under which the Court would grant an injunction.¹⁹ But, as already pointed out *ante*, p. 130, the remedy by injunction is perhaps of wider application than the remedy by caution.

A caution, being thus essentially a temporary expedient, and having by the mere fact of its entry no permanent effect on an interest protected by it, nothing more need be said here with respect to the nature of such interests. A right of action is conferred on any person who sustains damage by the lodging of a caution, as against the person who lodges the caution without reasonable cause (s. 56); no such right is conferred in respect of notices, inhibitions, or restrictions improperly entered.

4. The "lien on the land or charge," created by the deposit of the land certificate or charge certificate, or by notice of intention to make the deposit, appears to be an interest in part created, as well as protected, by notice being entered on the register.²⁰ Although the lien is said to be "created" by the deposit itself, the security thus effected would be so far of the nature of a purely equitable charge as to be defeated in case of registration of a transaction with the land or charge being completed without production of the certificate (*ante*, p. 117);²¹ but, since it does not necessarily

¹⁸ See the Australian cases: *In re Scanlan* (1887), 3 Q. L. J. 43; *Miller v. Davy* (1889), 7 N. Z. R. 515; *In re Jackson* (1890), 10 N. Z. R. 148.

¹⁹ See *McEacharn v. Colton*, *supra*. Australian cases on the analogy between caution (included in, but not identical with, the Australian "caveat") and in-

junction, may be found in Hogg's *Aust. Torrens Syst.*, 1036, 1039.

²⁰ 1897, s. 8 (6); 1903, rr. 243-251.

²¹ Compare the analogous case of deposit of a share certificate, and registration of a transfer without its production: *Rainford v. James Keith*, [1905] 1 Ch. 296, reversed on the facts, [1905] 2 Ch. 147.

follow that indemnity for loss caused by such registration could not be had, the interest created by the mere deposit as security seems to be something in the nature of a valid or legal interest, though defeasible. A definite degree of protection is, however, obtained by having a notice entered on the register, and although this notice is said (r. 243) to operate as a caution under s. 53, it is clear that in fact its effect goes beyond that of a caution, and really makes the "lien" complete, so far as such a security can be said to be complete. Any transaction entered into in face of the existence of the notice on the register would be postponed to the security, and such a transaction could not be registered, since the reason of the non-production of the certificate would be apparent. Where the certificate has not yet been issued, the notice of intention to deposit it comes first in order of time, and the certificate, when issued, is delivered to the intended depositor (rr. 245, 246).

The lien thus created is, in s. 6 (8) of the 1897 Act, referred to as a "mortgage by deposit;" in s. 8 (6) it is expressly made subject to "registered estates, charges, or rights," and said to be "equivalent to a lien created by the deposit of title deeds," etc., by a beneficial owner; by r. 251 it is made subject to "unregistered estates, rights, or interests protected by caution or other entry on the register at the time of the creation of the lien," and also—where the title is less than absolute—to "estates, rights, and interests excepted from the effect of registration." The "time of the creation" will be, in the case of a certificate already issued, the time of depositing it; in the case of a certificate not yet issued, the time of receipt of notice by the registrar. With respect to the priority of estates, etc., excepted from the registration, this does not in terms apply to absolute titles; but it is necessarily implied that the lien is subject, not only to registered rights, but also to rights to which all registered land is subject—as for instance the rights enumerated in s. 18. But the depositor's interest is not subject to merely equitable rights unprotected by entry on the register, and a comparison of the enactment now in force (s. 8 (6) of the 1897 Act), with the enactment which it has replaced (s. 81 of the 1875 Act), clearly shows that the former rule of law relating to equitable mortgages by deposit—under which a trustee could not usually confer on the depositor any interest which would be valid against the cestui que trust—is intended to be abrogated, with respect to mortgages by deposit of land certificate. This change is in exact accordance with the scheme of the system in abrogating the equitable estate as an inherent part of the ownership of the land, and substituting restrictions on the legal owner's proprietary rights. In fact, the rule with respect to legal and unprotected equitable rights in

registered land, as illustrated by the liens now under discussion, may be laid down in the very terms used to state what is *not* the rule with respect to unregistered land and other property: ". . . if the person entitled absolutely to the equitable interest in a share in a railway company, chooses for his own purpose to have that share standing in the name of a trustee for him, he will be bound, not merely by a valid legal transfer of that share by the trustee, but by any equitable dealing or contract which the trustee may choose to enter into. My Lords, that is a very serious proposition. It goes not merely to shares, but it goes to land, and to every other species of property. . . ." ²²

Carrying out the analogy of an equitable mortgage by deposit of title deeds, the deposittee would be entitled to obtain from the Court an order for sale, or for foreclosure,²³ and would then carry out the sale, or complete the foreclosure, as if he had taken a registered statutory charge.

5. By s. 84, as amended, conditions restrictive of the user of the land may at any time be "registered as annexed" to the land; persons deriving title from the proprietor of the land are then "deemed to be affected with notice of" the conditions; the conditions may be affirmative or negative, but must be conditions either (a) "running with or capable of being legally annexed to land," or (b) "capable of affecting assigns by way of notice." The conditions may be modified or discharged by the Court, on proof that the modification will be beneficial to the persons "principally interested in the enforcement of" the conditions; this has been held to mean that a modification will only be ordered with the consent of all who have bought with notice of the conditions.²⁴

The "registration" of the conditions seems to resemble, in its operation and effect, the registration of notice of leases, etc. (*ante*, p. 125); that is, the conditions are made incumbrances on the land, and the fact of the registration prevents subsequent owners from setting up against the person entitled to the benefit of the conditions the fact that technically this is not a registered interest. Consistently with the general scheme, no distinction is drawn between running with the land at law, and running with or binding the land in equity, and "legally" appears to mean only "validly"; that conditions running with the land in equity are included is shown by the amendment, but whether the added clause

²² *Shropshire Union Rys. v. Reg.* (1875), L. R. 7 H. L. at 507. Lord Cairns' speech, quoted by Farwell, J., in *Rimmer v. Webster*, [1902] 2 Ch. at 170.

²³ A vesting order, by way of foreclosing a mortgage by deposit of certificate, has been made under the Australian system:

Charter v. Cosmopolitan Bank (1902), 28 V. L. R. 251. And foreclosure of equitable mortgage by deposit of certificate of shares has been ordered: *Harrold v. Plenty*, [1901] 2 Ch. 314.

²⁴ *Ground Rent Development Co. v. West*, [1902] 1 Ch. 674.

is to be taken as meaning literally any restriction which binds assigns with notice, or is merely intended to describe the kind of restriction which, in cases decided since 1897, is said to run with the land in equity—is a difficult question which has already been referred to in connexion with the right to lodge a caution (*ante*, p. 130). Whatever may be the proper definition of “interest” for the purpose of lodging a caution, the words of the added clause in s. 84 seem to be sufficiently wide and clear to cover the case of such a covenant as is mentioned in *Formby v. Barker*,²⁵ and there is no reason why the mere “registration” of the covenant should extend its scope beyond proper limits, or give it any greater value simply because “annexed” to registered land. As it was held in *Formby v. Barker* that the fact of the assign having notice did not thereby confer a right of action on the covenantee’s representative, so the fact of statutory notice being imputed to successive proprietors of registered land would not, it is conceived, saddle them with any greater liability if the covenant or condition were not one that could be enforced against the covenantor’s assign.

6. The majority of the interests enumerated in s. 18 do not require the protection of registration or of notice, but notice of any such “liabilities, rights, or interests” may nevertheless, where their existence is proved, be entered on the register. These interests, though for some purposes not “deemed incumbrances,” are really quite as much incumbrances as interests which require entry on the register to make them so. But they are incumbrances only in the sense that leases, etc., are incumbrances (*ante*, p. 125), and not in the sense that mortgages are incumbrances (*ante*, p. 123). The omission to prove the existence of any particular right, as a liability upon any land, and have notice registered accordingly, does not appear to affect the validity of the right as an interest, except, of course, where the entry is not merely directed, but is expressly or impliedly made a condition of the validity of the right;²⁶ the entry on the register, however, even if it does not make the right of any greater validity where it really exists, at least saves the owner the trouble of proving it for the future. But the intention of the enactments, relating to rights which are at once interests owned by one person and liabilities or incumbrances on the property of another, appears to be that these rights—regarded as interests of the owner—should have the same warranty of title as the land to which they are appurtenant;²⁷ it is as correlative liabilities or incumbrances on the property of another that these rights are chiefly referred to in s. 18, and the notice,

²⁵ [1903] 2 Ch. 539. See *ante*, p. 130, note 10. 162, on appeal from Victoria.

²⁷ 1875, ss. 7, 13; 1903, r. 254.

²¹ See *James v. Stevenson*, [1893] A. C.

which is permitted, or in some cases directed, to be entered on the register, refers to entry as liabilities, and consequently is not—*quâ* notice—concerned with the warranty of their title as interests, any more than the title to a lease is warranted by registering notice of it. There is, however, necessarily a distinction between rights, regarded as interests of the owner, which are on the footing of personal rights—such as the benefit of covenants, and rights which are bound up with the ownership of other land by other persons, as easements and mines. With respect to the latter, the entry of notice as a liability—which would usually be in the charges register—necessarily implies the correlative entry on the register of other land as an interest, and this is provided for by s. 18 itself with respect to easements and mines, etc.; the entry on the register, therefore, of the right as an interest—usually in the property register—seems to be as much a warranty of title as entry of the main property, the land itself. But the title to an interest, which appeared on the register only by way of notice of a liability, whether because the right, as property, was not annexed to any other land, or because that other land was unregistered land and therefore outside the sphere of the register's influence, could not be warranted in the same way. The effect of registering notice of the rights enumerated in s. 18 will not, therefore, be the same in every case.

The effect of registering a notification that the land is exempt from a liability, to which it would otherwise be subject, seems to be in the nature of a warranty of title, and binding on the persons who would otherwise claim the benefit of the liability. Some difficulty on this point is caused by a difference of language in s. 18, provisoes (a) and (b) respectively, as regards land tax, tithe rent charge, etc., and as regards succession duty and estate duty; the notification is expressly made conclusive in the case of succession duty (which would include estate duty), whilst this express enactment is omitted in the case of land tax, etc. It is submitted, however, that the effect of the registration of the fact of exemption is the same in each case, and that the reason of the difference in language is that in the case of succession duty, etc., the registrar makes no independent investigation of title, but merely acts on the certificate furnished by the Inland Revenue Commissioners, whilst in the case of land tax, etc., the registrar does investigate the evidence furnished by the applicant for exemption (r. 212).

So far as a mere enumeration of the rights mentioned in s. 18 is concerned, the section speaks for itself, and the observations to be now made on some of those rights will apply to any of the remaining rights which may be notified on the register. Notice of the following is expressly directed to be entered under certain circumstances:

i. Rights to mines and minerals, and incidental rights and reservations ;

ii. Succession duty and estate duty ;

The following are expressly mentioned as being rights in respect of which notice may be entered :

iii. Easements ;

iv. Powers of re-entry and rights of reverter.²⁸

i. The ownership of the mines and minerals, when proved to be severed, is directed to be registered separately "in manner hereafter in this Act mentioned," *i.e.* in the manner provided for the registration of "spatial areas" under s. 82 (*ante*, p. 55), and this registration is to be notified on the register of the land from which the mines are severed. When the ownership of the mines is proved not to be severed, the proprietor of the land is directed to be registered as proprietor of the mines as well. Since rights in the mines are only protected from the effect of registration of the land when they have been created prior to January 1, 1898, or—if the land were registered before that date—prior to the registration of the land, the omission, from the register of the land, of any entry of the fact that the mines had been severed—where the severance has taken place since December 31, 1897, or since the registration of the land, if registered before January 1, 1898—might result, in the case of land registered with absolute title, in the mines owner losing his property by the registration of an innocent purchaser as proprietor of the land. The notice may thus be important. It is true that ss. 30 and 35, as amended, in stating the effect of a registered transfer, make "land" include the mines only "if parcel thereof"; but this is an ambiguous expression which could hardly be held to outweigh the other precise enactments in favour of a registered transferee taking subject only to incumbrances entered on the register or expressly accepted under s. 18.

Mines and minerals constitute the only spatial area as to which express provision is made for notifying its separate ownership on the register of the land of which it would otherwise form a part.

Since the entry of notice—on the register of the land with respect to which the right to the mines is an incumbrance—is accompanied by registration of the right as another substantive ownership, the result seems to be that the entry of the notice does not of itself have any effect, theoretical or practical, on the right considered as ownership.

ii. The general effect of s. 13 of the 1897 Act, and rr. 208-211, is that a *bonâ fide* purchaser is, on registration as transferee of land registered with absolute title, exempt from payment of any succession

²⁸ 1875, s. 18 (as amended by 1897, sched. 1); 1897, s. 13; 1903, rr. 208-215.

duty or estate duty where these are not notified on the register as existing liabilities; in the case of possessory or qualified title the warranty against the liability, when not registered, is also complete as from the "original"—which seems to mean "first"—registration. The notice of the liability must therefore be registered in the corresponding cases in order to entitle the authorities to enforce payment from the proprietor of the land; the effect of the registered notice may thus be said to create the right, as against the land affected.

By s. 83 (8), the provisions of the 1875 Act relating to the liability of land to succession duty apply also to registered charges. Since the 1875 Act and the 1897 Act are, by s. 26 of the latter, to be read as one, the provisions of the 1897 Act, and the 1903 Rules, on the subject also seem to apply to registered charges as well as land.

iii. An easement cannot, of course, be registered as an incumbrance unless the servient land is on the register. In the event of the dominant land being still unregistered, the effect of registering the easement would not seem to make the title to it either better or worse. In the event of the dominant land being also registered, the easement would be an appurtenance, but would not, apparently, have the same warranty of title as the ownership of the land itself, unless it were expressly so stated on the register.²⁹ The express entry of the easement on the register of the dominant land would, apparently, have the effect of including the right to the easement in the warranty of title, and in addition, when "practicable and required by the parties," the dominant and servient tenements might be "defined"; the result would then, apparently, be the same, with respect to the boundaries of the two tenements, as in other cases of boundaries being fixed and ascertained (r. 273).

iv. Powers of re-entry and rights of reverter afford instances of interests which might be lost to the owners, in the event of their not appearing on the register, and the land—if registered with absolute title—becoming vested in a *bonâ fide* purchaser. The substantial effect of the notice being registered would thus be to keep the right in existence. The registration of the notice in this case seems analogous to registration of notice of estates in dower, etc., and would not afford any actual warranty of the title to the rights notified, or make them less amenable to the rule against perpetuities.

7. The registration of a priority notice is authorized by 1903, r. 117; it ensures that any transaction registered subsequently to the priority notice, but before the transaction mentioned in the

²⁹ See an Australian case: *In re Houston* (1897), 18 N. S. W. 300.

latter, shall nevertheless not have the priority in interest which priority in registration would otherwise give it. The "priority" is secured rather by anticipating the statutory effect of registration, than by fixing the person interested under the postponed transaction with notice of the prior transaction; but this kind of interest may, perhaps, be conveniently classed with interests protected by registered notice, since a notice is in fact registered.

8. The plan of entering on the register a notification that certain rights are "excepted from the registration,"³⁰ where an absolute title cannot be registered, does, in effect, preserve the rights thus notified from being defeated, and this protection operates through the medium of the doctrine of notice. The phrase "excepted from the registration" is not literally correct; the interests are preserved, but if they are what are ordinarily known as estates, or ownership, under the general law, they are, as in the case of the legal estate even under possessory registration, turned into rights of more or less value. In the case of qualified title, these rights are *ex hypothesi* not complete rights to have the ownership, but merely possibilities of, or contingent, rights, whose validity has to be tested and substantiated.

SECTION 3.—RIGHTS PROTECTED BY RESTRAINTS ON ALIENATION.

The method of protecting rights relating to land by restraints on alienation differs completely in principle from the method of protection by notice, though the practical results may often appear to be the same. Protection by means of restraints on alienation has already been referred to as answering generally, under the new system, to the protection afforded by the possession of the equitable estate under the general law (*ante*, pp. 10, 41). Rights protected by means of direct registration, and of registration of notice, are for the most part specifically enumerated in the Acts and Rules. A caution is a method of protecting rights which is intended to be more or less temporary, and in the nature of an interim injunction, and rights which may be protected in this way are not enumerated in detail. After providing for rights which are valid and completely secured without registration, registered rights, and rights protected by registered notice, the system permits other rights relating to land—capable of protection and recognized by law—to be protected by means of restraints on the alienation of the land by the registered proprietor. These rights include more than rights which are merely equitable under the general law; rights created by formal conveyance of an estate, which would under the general law be

³⁰ 1875, s. 9; 1903, rr. 48, 49, 58.

either a legal estate or a complete equitable estate, are also included.¹

All rights which are in the nature of trusts require protection by means of restraints on the registered proprietor's powers of alienation.² The proprietors of settled and charity lands, and ecclesiastical corporations sole, are limited or fiduciary owners only, and the rights of other persons in the land require protection by means of these restraints on alienation.³ "Restraint on alienation" is here used as being the most general term; "restriction" has sometimes a narrower meaning, though often used in the wider sense of restraint in general.⁴ Both caution and registered notice are sometimes included in "restriction" in its wide sense, but it will be convenient to use "restriction" in a narrower sense, and keep "restraint on alienation" and "restrictive entry" for the wider meaning. Caution and notice have been sufficiently referred to. There are three kinds of restrictive entries proper: inhibition, restriction, and entry of no survivorship. As these all depend upon the same principle for their efficacy in protecting rights in land, and as the difference in their operation is only a question of degree, it will be convenient, after noticing in what respects they differ inter se, to make some further observations on them taken together as restraints on alienation.

An inhibition is an entry on the register, or an order constructively entered on the register, made by the Court or the registrar, inhibiting—generally or on particular terms—any dealing with registered land or a registered charge.⁵

A restriction is an entry on the register, restricting the *prima facie* right of the proprietor to transfer or charge the registered land or registered charge, so that no such dealing can be carried out unless certain specified conditions are complied with, as (a) that notice of application to transfer or charge the property be posted to a given address; (b) that the consent of named persons be given to the transfer or charge; (c) that something else be done, to be approved of by the registrar.⁶

An entry of no survivorship is an entry made on the register, when two or more persons are registered as proprietors of land or a registered charge, stating that when the number of proprietors is reduced below, or to, a specified number, no registered disposition is to be made except by order of the Court or the registrar; and

¹ 1875, s. 49; 1897, s. 7 (3); *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631.

² 1875, ss. 68, 83, sub-s. 1, 3 as amended by 1897, sched. 1; 1903, rr. 224, 225.

³ 1897, ss. 6, 15; 1903, rr. 78-86, 234-

242.

⁴ See, for instance, 1875, s. 49; 1897, s. 7 (3); 1903, r. 29.

⁵ 1875, s. 57; 1903, rr. 234-241.

⁶ 1875, ss. 58 (as amended by 1897, sched. 1), 59; 1903, rr. 240-242.

the registrar must then inquire into the equitable title before allowing any registered disposition.⁷

As one effect of a caution may be compared to that of an interim injunction, so a restrictive entry proper may be compared to a final injunction made at the hearing. That the "inhibition" mentioned in s. 57 is really an injunction is shown by the fact that the corresponding provisions in the Land Registry Act, 1862, which authorize the Court only—and not the registrar—to "issue an order restraining for a time," etc., form part of a group of sections headed "Injunction"; the term used in the 1862 Act, corresponding to the "restriction" of s. 58, is "restraint of conveyance," and the enactment with respect to this is almost word for word identical with s. 58.⁸ The principle of "enjoining" the legal owner of the land against dealing with, or using, the property so as to deprive the person beneficially entitled of his rights of enjoyment, is in fact the principle upon which the Court of Chancery proceeded, before the rise of the equitable estate, in securing to the cestui que use his rights in land against the feoffee to uses. Compelling the legal owner to recognize beneficial interests, and splitting the estate of the legal owner into two parts of which one—the equitable estate—is taken from him, are really alternative methods of effecting the same result. Juridically, the two methods are, of course, radically different; the difference is illustrated by comparing the English trust with the Roman *fidei commissum*, as has been done in an American Court.⁹ The equitable ownership of modern English law has also been compared, in the Privy Council, with the rights of a person entitled to specific performance of an obligation to transfer land under the Roman Dutch law of South Africa.¹⁰ The analogy afforded by the last cited case is not affected by the fact that allodial ownership prevails in South Africa, and the rights of a person entitled to the transfer of land under the English Land Transfer Acts are, it is submitted, aptly described in the terms applied in *Crowly v. Bergtheil* to a purchaser of land in South Africa: ". . . a purchaser of land, though he may have paid the price, is not until regular legal transfer the owner of the land, but is only one who has a claim against the vendor. To speak of him as the true owner in the language of an English Court of equity, though the expression may be used for brevity's sake, is not correct, and if there were other claimants against Smith or his estate it would be misleading;

⁷ 1875, s. 83 (3) (as amended by 1897, sched. 1); 1903, rr. 224, 225, f. 57.

⁸ Land Registry Act, 1862, ss. 93, 101. The words "direct" and "directions" in ss. 93 and 94 are evidently the source of the word "directions" in s. 59 of the 1875

Act, though not occurring in s. 58.

⁹ *McDonough's Exors. v. Murdoch* (1853), 15 How. 367.

¹⁰ *Crowly v. Bergtheil*, [1899] A. C. 374, 390.

but the plaintiff's claim against Smith is beyond dispute, so that as between those two the plaintiff might have become the owner of the estate at his own will and at any moment."

As already stated, p. 139, the rights which require the protection of restraints on alienation include not only what are ordinarily known as equitable rights, but also what would be called in general law actual estates, both legal and equitable, in the land. The Acts and Rules expressly mention equitable rights, equitable title, equities, etc., and also mention—in addition and in contrast with equitable rights, etc.—"estates and interests created under s. 49."¹¹ Whatever may be the exact relation inter se of unregistered estates created under s. 49 by a formal deed of conveyance, and equitable rights less formally created, both classes of rights have one common characteristic, i.e. liability to be defeated or "impaired" by the registration of a statutory disposition. This liability to destruction tends to reduce these rights all alike to the level of merely equitable rights, or contractual rights. Even a "legal" estate in land, unless saved by being excepted from the registration—as in the case of registration with possessory title, cannot be properly called any longer a "legal title." A formal conveyance of registered land by deed unregistered, which would in ordinary law be sufficient to vest in the grantee the legal estate, if then in the grantor, may be compared in its operation to a similar deed purporting to deal with copyhold land, which passes nothing more than an equitable interest; surrender and admittance are, in the case of copyholds, necessary to vest the legal estate in a purchaser.¹²

The interest of a person entitled beneficially to the enjoyment of the land, or to receive the rents and profits of it, but who does not claim to have the land transferred to him by the registered proprietor, is substantially of the same nature as that of a person who claims to be placed on the register as proprietor; it rather resembles a right against the proprietor than an estate inherent in the land. These rights against the legal owner of the land approximate more to equitable interests in copyholds,¹³ and to the interest of a beneficiary as against a trustee in Scottish law,¹⁴ than to the modern English equitable estate.

Rights protected by restraints on alienation are all on one level, so far as they are related to the registered estate or interest, and their validity as against that registered estate or interest is the same

¹¹ 1875, s. 49; 1897, s. 7 (3); 1903, rr. 225, 230.

¹² *Rez v. Mildmay* (1833), 5 B. & Ad. 254, 39 R. R. 457.

¹³ See *Wainewright v. Elwell* (1816), 1 Madd. at 632, where it is said: "a purchaser of a copyhold . . . who has not

been admitted, may devise his equitable interest, or more properly speaking, his right to the copyhold."

¹⁴ See *Heritable Reversionary Co. v. Millar*, [1892] A. C. 598, which illustrates the likenesses and differences between the English and Scottish law of trusts.

in every case, whatever may be the nature or degree of the protected right. The validity thus given them is of a negative kind, and consists simply in arresting the dynamical operation of the registered estate in order to allow the subsidiary rights to have full play among themselves. The relations inter se of these subsidiary and protected rights have nothing to do with the scheme of the system, which as to them may be called negative or inactive. In general, it would seem that the relations inter se of the protected rights resemble the relations of equitable rights of various kinds under the general law, where the technical legal estate is vested in a bare trustee. The principal practical difficulty is to arrive at some conclusion as to the result of the technical legal estate not being vested in the registered proprietor of the estate affected by the restraint or alienation, but in a person who is the holder of a protected right. Would the acquisition of the technical legal estate give the holder an advantage which, in regard to unregistered land, the possession of the legal estate now gives? It is submitted that the proper answer to this question is a negative, and that the mere possession of the legal estate would not per se, under the supposed circumstances, confer any advantage. The essential principle, on which the right of the holder of the legal estate to priority rests, is that the possession of the legal estate is in itself ownership, and not a mere right to have the ownership; that is, it is a right in re against the world, and not merely a right ad rem liable—in common with even equitable ownership—to be defeated at the instance of the legal owner. It has been pointed out (*ante*, p. 90) that the ownership of registered land is constituted by being on the register as proprietor, and that in one sense the legal estate has been deposed from its theoretically commanding position as the criterion of ownership, and—with respect to registered land—is now a right ad rem rather than a right in re; whilst perfectly secure as a right of property, and of the same value as before the land was registered—whatever that value may have been—the legal estate nevertheless has ceased to be in itself ownership, and is only a right to have the ownership. This right, if good and valid, can be enforced as what may be called either a compensatory or a restitutional right; under certain circumstances this enforcement will result in the ownership of the land being changed, or the register being rectified—when “the rightful claim” is “not at one with the registered title.”¹⁵ If the right of the holder of the legal estate be a good and valid right to have the ownership, *i.e.* a right to receive either compensation or restitution—as might happen where the registration was with possessory title, or where the registration was with absolute title but grounded on an imperfect equitable

¹⁵ The phrase is from *Crowley v. Bergthell*, [1899] A. C. at 389.

title—then this right will not be defeated by any transactions, registered or unregistered, with the registered land, and may be enforced by any succeeding holder of the legal estate¹⁶—subject, of course, to the operation of Limitation Acts. The legal estate here referred to need not, of course, be a fee simple; in other cases the right will be the same in kind, though less in degree. Whatever may be the extent of the right to compensation, or restitution, it will be a right, if not against the registered proprietor, at least in respect of the registered estate and its ownership. But it will be this, or nothing. Any legal estate could only come into competition with an unregistered interest subsidiary to the registered estate by being paramount to the registered estate, and the subsidiary interest would depend for its validity on the nature of the warranty attaching to the registered estate; for instance, if the registration were with absolute title the right of the holder of the legal estate would probably be compensatory only, and subsidiary interests would not suffer, whilst if the title were possessory or qualified, the subsidiary interest might fall along with the registered estate. This liability to be defeated, however, by reason of the unsoundness of a title less than absolute, is equally shared by all registered estates created subsequently to the registration of the land, so that it cannot be said that unregistered interests are peculiarly liable to be defeated by an outstanding legal estate. It seems clear, therefore, that where the registered proprietor has not the legal estate, the latter will only prevail over unregistered interests by prevailing over the registered estate itself; this is not what is meant by gaining priority over unregistered interests—or competing with them.

It will next be necessary to consider the case of the legal estate being vested in the registered proprietor. The statutory estate conferred by registration, with all its incidents, is not made more efficacious by the legal estate being vested in the proprietor; no distinction is drawn in the Acts between a registered fee simple, or a leasehold estate, grounded on a legal estate and one grounded on an equitable estate, a power of disposition, or a mere nomination. It is true that one registered proprietor may be competent to create unregistered interests which another registered proprietor is not competent to create; but this depends on powers or agreements expressly or impliedly conferred or not conferred apart from the registered estate, and in no way depends on the possession of, or want of, the legal estate. On ordinary principles of property law it seems reasonable that the legal estate should altogether merge

¹⁶ See *McEllister v. Biggs* (1883), 8 A. C. 314, referred to at some length *ante*, p. 98. The possibility of an unenforceable legal estate being, as it were, re-

vitalized by getting into the hands of a purchaser without notice is referred to *ante*, p. 101.

in the statutory estate;¹⁷ if the views expressed above, as to the legal estate being turned into a mere right to have the ownership, are sound, it seems to follow that the legal estate, once merged in the statutory estate, cannot again be separated from it and made to exist as a distinct estate conferring the rights of priority which only its position as ownership under the general law enabled it to confer.

The only positive enactment, which could be relied on as giving a registered proprietor authority to vest the legal estate in another person by unregistered deed, is s. 49, and it has been held¹⁸ that the enumeration of estates, rights, interests, and equities implies that "legal" estates—in the ordinary technical sense—are referred to. But it is submitted that these words do not necessarily refer to the legal estate, but are consistent with the view that a technical legal estate can no longer be created by a registered proprietor, and rather refer to estates, etc., which are only estates by analogy, much as the equitable estate was originally an estate merely by analogy to legal rights. The governing words of the enactment appear to be: "subject to the maintenance of the estate and right of such proprietor," and it appears to be inconsistent with the maintenance of the registered estate that another "legal" estate should be created which would be of the nature of legal ownership. Any estates created by virtue of s. 49 would seem to bear a relation to the registered estate analogous to the relation which formerly existed between the equitable estate and the legal estate.

If these considerations are sound, all question of priority, by the possession of the legal estate per se, must be at an end; priority between competing interests will have to be determined on the principles which govern questions of priority between equitable interests in unregistered land, having also regard to the facilities for protection of unregistered interests afforded by the Acts and Rules. Neglect or delay in taking advantage of those facilities would be a material circumstance to be taken into account in deciding between conflicting rights, according to the principle by which neglect to enter a restrictive entry may be a bar to recovery of indemnity for loss.¹⁹

If the effect of the Acts and Rules is that "seisin" is abrogated and replaced by the registered estate, that an owner need not be "seised" of registered land, and that no technical "legal estate"

¹⁷ See *Goodright v. Wells* (1781), Dong. 771; *Selby v. Alston* (1797), 3 Ves. 339, 4 R. R. 10; *In re Selous*, [1901] 1 Ch. 921.

¹⁸ *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. at 656, judgment of Cozens-Hardy, L.J.

¹⁹ 1897, s. 7 (3). And so under the

Australian system neglect to enter a caveat may cause an interest prior in time to be postponed: *General Finance Co. v. Perpetual Executors* (1902), 27 V. L. R. 739; *Barnes v. James*, ib. 749. Other Australian cases may be found in Hogg's Aust. Torrens Syst., 1023-1028.

can be created in registered land, it should follow logically that the common law doctrines and rules relating to seisin, as these concern contingent remainders, uses, etc., will not apply to estates and interests in registered land created off the register—as under s. 49—any more than they apply to registered estates and interests. This would mean that limitations might be framed without relying on the Statute of Uses, and would take effect as limitations of the equitable estate do in the case of unregistered land, and that estates in remainder would be in the nature of equitable remainders. This result may sound startling, or even revolutionary, and perhaps will constitute a strong argument against accepting the views as to the relation between the registered estate and legal estate which lead to such a result. But it must be borne in mind that s. 49 only allows estates, etc., to be created—"as . . . if the land were not registered"—"subject to the maintenance of the estate and right" of the registered proprietor, and that every registered proprietor has an estate in fee simple—or for years, as the case may be—vested in him by express enactment.³⁰

A difficulty is caused, with respect to settled land, by the language of s. 6 (8) of the 1897 Act. It has been suggested, as stated *ante*, p. 86, that this sub-section impliedly enacts that a tenant for life, registered as proprietor of freehold land, will not have a statutory fee simple, and that any legal estates created by the settlement are unaffected by the registration. The wording of the sub-section certainly lends itself to this construction at first sight, and if taken without reference to the express enactments of the 1875 Act and the general scheme of the system. It is submitted, however, that the arguments against such a construction greatly outweigh the arguments in favour of it. The chief argument in favour of the view that legal estates are preserved, and that a statutory fee simple is not conferred on a tenant for life by his registration as proprietor, is that "the estates, rights, and interests" under the settlement are to be "unaffected by the registration," subject only "to the maintenance of the *right* of the registered proprietor to deal" with the land; this differs from the analogous language in s. 49 of the 1875 Act, where the creation of unregistered estates is allowed "subject to the maintenance of the *estate and right* of" the registered proprietor. It might perhaps be inferred that whilst under s. 49 the registered proprietor had an "estate" conferred on him, under s. 6 (8) he had no "estate." This inference seems to be rebutted by two considerations. In the first place, the mention of the word "estate" in the first paragraph of s. 49 is unnecessary, since by s. 7 and other enactments a fee simple

³⁰ 1875, ss. 7, 8, 13, 30-33, 35, 38; 1903, rr. 55-57, 140-142.

had already been conferred on every registered proprietor of freehold land; in the other paragraph of s. 49 the word "right" only is used, and in both paragraphs it is only the capacity of the registered proprietor to deal by registered disposition that is referred to. In the next place, the presence of the word "estate" in s. 49 may be accounted for by the difference in the grammatical structure of the two sections. In s. 49 the words "subject to the maintenance of the estate and right of such proprietor" are parenthetical, and not in direct grammatical connexion with "transfer or charge registered land"; in s. 6 (8) the words "subject to the maintenance of the right of the registered proprietor" are immediately followed by, and in direct and close grammatical connexion with, the words "to deal by registered disposition . . . with any land." In the former case the word "estate" occurs naturally, and is not insensible even if it be unnecessary; in the latter case it would have been impossible to insert the word "estate" without making nonsense of the sentence.

It is submitted that according to the true construction of s. 6 (8)—taken with the other provisions of the Acts—the "estates, rights, and interests" conferred by the settlement are to remain as rights of property "unaffected by the registration," much as a legal estate outstanding on first registration is, as a right of property, excepted from the effect of registration; this is not inconsistent, in either case, with the technical legal estate being extinguished in the statutory registered estate. The result is that the "estates, rights, and interests" are "unaffected" in every practical sense, though the necessary result of the capacity of the registered proprietor to deal with the land is to place them, juridically, on a different footing. It must also be borne in mind that the sub-section—and indeed the whole of s. 6 of the 1897 Act—is not concerned with the creation of interests in settled registered land, but in providing for the preservation of the rights under an existing settlement where the settled land has been brought on to the register. This distinction is dealt with more fully, under the heading "Settlements" in Chapter IV., sec. 2, sub-sec. 3.

SECTION 4.—ESTATES, INTERESTS, AND RIGHTS UNPROTECTED BY ANY SPECIAL ENTRY.

Unprotected interests may be divided into: (I.) those which are not defeasible for want of an entry on the register; (II.) those which are defeasible if not protected by an entry on the register.

I. Interests which do not depend for their protection on any

entry in the register are: (1) interests enumerated in s. 18 as interests which are not deemed incumbrances; (2) interests excepted from registration; (3) interests expressly conferred by the Land Transfer Acts or other statutes independently of registration.

1. With respect to the interests enumerated in s. 18, and not "deemed incumbrances" so as to require registration, these are referred to *ante*, pp. 109, 135. When not entered on the register, the title to them is proved independently of the register. They are, in the strictest sense, legal interests.

2. Interests which are "legal" in the technical sense, or otherwise complete and enforceable, and are already in existence when the land is registered with possessory title, may be said to be "excepted from the registration," though this phrase is not applied to them in the 1875 Act; they, as well as rights expressly excepted from the registration, seem to come within the description of estates, rights, or interests "adverse to or in derogation of the title of" the first registered proprietor, "subsisting or capable of arising at the time of registration," whose "enforcement" is not affected or prejudiced by the possessory registration. The view taken of the effect of even possessory registration on an outstanding legal estate has been already stated (*ante*, p. 95); the legal estate is, in effect, ousted for the time being from its position as a criterion of ownership, and turned into a right of corresponding value, *i.e.* a right to have the ownership, which is evidenced by registration, divested from the proprietor on the register, in case the legal estate did really represent substantial—and not merely technical—rights of ownership in the person holding it at the time of the registration. The phrase "excepted from the registration"—although quite as applicable in the case of possessory, as in the case of qualified, titles—is not, of course, literally accurate, since the registration does, in the view here taken, have some effect on the legal estate; the latter is, however, "excepted," in the sense that it is not barred from being actively asserted as a right of property, which is the effect which might be produced by a registration with absolute title. What is here said of the "legal estate" being "excepted" from registration may, of course, apply to other enforceable rights.¹

3. The right to be registered as proprietor, in succession to a proprietor whose name has by reason of his death, bankruptcy, or otherwise,² ceased to be rightfully on the register, appears to be an absolute right conferred by the Land Transfer Acts themselves

¹ An illustration of an enforceable right, not strictly a "legal" estate, is afforded by the benefit of the restrictive covenant in *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. 391.

² 1875, ss. 41, 42, 43 (amended by

1897, sched. 1); 1903, rr. 151, 183-200. And see 1897, s. 9 (6), where the right which "devolves" on death, etc., is impliedly contrasted with the right which is "conferred" by a statutory instrument.

independently of registration, and as such to give rise to a claim for indemnity if lost by rectification of the register becoming impossible.³ Such a right differs from a right to be registered by virtue of an instrument of transfer or charge, which would not ordinarily give rise to a claim for indemnity. Under s. 7 (3) of the 1897 Act the interest conferred by an unregistered instrument would have to be protected in order to confer anything in the nature of a warranted right; it would often be impossible to protect a right arising by virtue of the death, etc., of the registered proprietor, and such successory interests do not appear to be included among those enumerated in s. 7 (3), as requiring protection under pain of losing indemnity.

Interests or rights conferred by general statutes, and independent of registration, are such interests as are enumerated by way of illustration in r. 151—under statutes for compulsory acquisition of land, vesting orders made in pursuance of the Trustee Acts, etc. These interests appear to be quite independent of registration or protection by entry on the register, and not to be referred to in s. 7 (3) of the 1897 Act. The warranty of title conferred by his registration on a proprietor whose land was completely divested from him, or subjected to a burden, by legislation extrinsic to the Land Transfer Acts, would be complied with by allowing him compensation under the indemnity provisions. The principle according to which charges, created by a general statute of the United Kingdom, take effect automatically on land in Scotland, notwithstanding that under Scottish law such a burden would ordinarily require registration in order to be effective, seems to apply exactly to registered land in England.⁴

II. Estates, etc., which are defeasible if not protected by some entry on the register may be: (1) Merely equitable interests impliedly excepted from registration with possessory title; (2) Estates, etc., created under s. 49, or merely equitable rights against the registered proprietor, arising before or after registration with qualified or absolute title; (3) Interests and rights under statutory instruments of transfer or charge not yet registered.

1. It is conceived that merely equitable interests, which remain enforceable against a proprietor registered with possessory title only, can only be so enforced by virtue of the doctrine of notice, and under circumstances which would make them valid against the holder of the legal estate. To make estates and rights created by statutory registered disposition inferior to equitable interests of which the parties to the statutory dispositions had no notice, would

³ 1897, s. 7 (1, 2).

⁴ See *Lord Advocate v. Moray*, [1905] A. C. 531.

be equivalent to depriving the statutory estate conferred by registration of the badge of ownership which it is submitted is affixed to the registered estate. But since the legal estate remains as an enforceable right against the possessory registered estate, the holder of an equitable interest might, by getting in the outstanding legal estate, make good his claim as against the registered estate. With respect to the kind and degree of notice which must be brought home to the registered proprietor, it is conceived that questions of this sort will be decided precisely on the lines which would govern them if the land were unregistered, and that the modifications of the doctrine of notice introduced by the Acts will not apply, in general, where equitable interests, in existence prior to registration with possessory title, are concerned.

2. Estates and rights created under s. 49—necessarily after registration of the land—and equitable rights in general against the registered proprietor (including equitable rights created before the registration, when other than possessory), will be good as personal rights against the registered proprietor and volunteers claiming under him; as against purchasers for value duly registered, these interests will depend for their validity on the doctrine of notice. The notice required will, however, differ both in kind and degree from that which is sufficient to affect a purchaser under ordinary equity jurisprudence. The notice of an unregistered interest which would be sufficient to postpone a duly registered purchaser must, it would seem, be notice clearly brought home to him that by becoming registered he will actually be wrongfully depriving the holder of the unregistered interest of that interest, and so that it would amount to dishonesty and fraud if the proposed transaction were carried out. The subject is referred to in Chapter VII., *post*, in connexion with rectification of the register.

3. The interest taken by a proposed transferee or mortgagee, under a statutory instrument which is not yet registered, cannot be said to be an estate in the land, in the ordinary sense, but is of the nature of an equitable right, liable to be defeated by another bona fide registration being actually effected. This right cannot be better described than by the expression used in s. 9 (6) of the 1897 Act, "the right to be registered as proprietor of land or of a charge."⁵ Like the estates and rights just referred to, created by ordinary deeds and non-statutory instruments, the right of a person claiming

⁵ Under the Irish Act of 1891 (54 & 55 Vict. c. 66), s. 25, the statutory title of a purchaser from the Land Commission, before registration, has been described as "an inchoate right incapable of being defeated, and only waiting for an official duty to be performed to become an absolute

estate." *In re Furlong and Bogan's Cont.* (1893), 31 L. R. Ir. at 195. And when the land has been registered, an estate passes, not on execution of the conveyance, but on registration: *Torish v. Orr*, [1894] 2 I. R. 381.

under an unregistered statutory instrument is good as a personal right against the registered proprietor, and volunteers claiming under him, though it will only be valid against a registered purchaser for value if the latter can be affected by notice of it. Notice which would be insufficient to postpone a registered purchaser to the holder of an interest created by non-statutory instrument, and for whose protection provisions are made in the Acts, might well be amply sufficient to postpone a registered purchaser where the adverse interest was under a statutory instrument intended to be registered. It is consistent both with good faith and the scheme of the system that other persons than the registered proprietor should be known to have interests in the land, not appearing on the face of the register, and to effect registration with knowledge of the existence of such interests may be justifiable and proper. But to effect registration, with knowledge that another person is also taking steps to effect registration in respect of the same property, could hardly under any circumstances be otherwise than dishonest and fraudulent. Accordingly, it would seem that such a registered purchaser would more readily be considered as acting *malâ fide*, and more readily postponed in favour of the person of whose right he had notice.

The interest of a person who has a statutory instrument of transfer or charge executed in his favour, but is not yet registered as proprietor of the interest intended to be conferred, is analogous to the "personal fee" of Scottish law as contrasted with the "feudalized conveyance" which, by being registered, confers real rights of property.⁶ The unregistered statutory instrument may also be said to confer an interest similar to that conferred on a purchaser of copyholds before admittance, as to which it has been said:⁷ "Till admittance the title is in progress, inchoate, and incomplete, like a bargain and sale without enrolment, a feoffment without livery of seisin."

The necessity for "completion" of a transfer or charge, by registering the purchaser or mortgagee as proprietor⁸ of the land or charge, also suggests the analogy of the necessity for assurances of land being in writing by the Statute of Frauds, and under seal by the Real Property Act, 1845. It is true that statutory instruments of transfer or charge must now—since the Rules of 1898—be under seal. But the mere fact of these instruments being under seal does not seem to add anything to the efficacy of the estate or interest

⁶ See Bell's Principles (8th ed.), paras. 851-854; *Johnson v. Buocleuch*, [1892] A. C. at 627. The expression "personal fee" is not unknown in English law; for "if an annuity be granted to a man and

his heir, it is a *fee-simple personal*": Co. Litt. 2a.

⁷ *Wainewright v. Elwell* (1816), 1 Madd. at 633.

⁸ 1875, ss. 22, 29, 34, 40.

which is the subject of the transaction, and which can only be completely vested in the transferee or mortgagee by the registration of the latter as proprietor of the land or charge. So far as such an instrument contains a grant of an estate, or a covenant or stipulation which is, apart from the provisions of the Land Transfer Acts and Rules, rendered more efficacious by being contained in a deed rather than in a writing under hand, it will take effect independently of registration as any other document would do which purported to confer an interest in the land, whether under s. 49 or otherwise. With respect to its priority among competing instruments, the consideration, which would weigh against giving priority to a transaction carried out by an unregistrable instrument and unprotected by the means provided—restrictive entries, would weigh even more heavily against giving priority to a registrable transaction, where the registration necessary to complete the transaction was deliberately omitted or delayed. With respect to the intrinsic value of the executed statutory instrument of transfer or charge, this seems to be, as nearly as possible, on the level of a lease which is void as not being under seal, but which nevertheless confers a right to specific performance as an agreement for a lease.⁹

⁹ See *Zimble v. Abrahams*, [1903] 1 K. B. 577.

CHAPTER IV.

TRANSACTIONS INTER VIVOS.

SEC. 1.—Conveyances on sale in compulsory district before first registration.

SEC. 2.—Transactions on the register.

SEC. 3.—Transactions off the register.

SECTION 1.—CONVEYANCES ON SALE IN COMPULSORY DISTRICT BEFORE FIRST REGISTRATION.

THE enactments relating to compulsory registration¹ make it necessary to consider how far the provisions of the Acts and Rules apply to transactions with land, situated in a compulsory district, even before the land is on the register. The first thing to do is to ascertain whether the land is in a compulsory district, and if so, whether it is registered. Both these facts can be ascertained at the same time, by searching in the index map at the Land registry.² The land may, of course, be registered, even if it is not in a compulsory district, and thus the information obtained is valuable in any case. If the land, being in a compulsory district, is not yet registered, the next point to consider is whether the proposed transaction will be affected by the Acts at all. This is dealt with in Chapter II., sec. 3, *ante*, p. 58; the general rule is that, assuming the land or interest to belong to a class of property which is subject to the compulsory provisions, the transaction, in order to be affected by the Acts, must be a conveyance of freehold or assignment of leasehold on sale, or a grant of a lease, such as are referred to in s. 20 of the 1897 Act, and rr. 69 and 70 (*ante*, pp. 62, 65). Mortgage transactions which do not involve a sale are not directly affected by the compulsory provisions; the only difference between a mortgage over land in a compulsory district and an ordinary mortgage would be that the mortgagee might deem it advisable to lodge a caution against the land being registered.

The degree of difficulty in carrying out a sale or lease transaction which falls within the compulsory provisions will vary according to

¹ 1897, ss. 20, 22 (6) (g); 1903, rr. 68-70. See *ante*, p. 58.

² 1903, r. 283. See Br. & Shel. (2nd

ed.), 30, 461, 618; at p. 618 a form of application for search is given.

the circumstances; these circumstances will, in most transactions, be some of the following :—

- (1) The vendor will have the legal estate, and the purchaser will not require to mortgage, unless back to the vendor, before he registers;
- (2) The vendor will not have the legal estate, which will be in a mortgagee, in a trustee for the vendor, or outstanding altogether;
- (3) The purchaser will require to mortgage the land to a stranger before he registers.

1. It will be convenient to take separately the cases where :
(i.) the purchaser pays the purchase money in full ; (ii.) he mortgages back to the vendor.

i. If the vendor has the legal estate, this necessarily implies that he had already taken his conveyance before registration became compulsory ; but where the vendor's conveyance is of recent date, it should be ascertained that the date is prior to the date fixed by the relevant Order in Council.

If the purchaser intends to pay the purchase money in full on completion, the transaction may be completed in the usual manner, and the purchaser will, immediately after completion, apply for registration (*ante*, p. 69). He may dispense with a formal conveyance or assignment—though, apparently, not with a formal lease—and rely on a mere receipt for the purchase money, if he intends to register with absolute title ; but under ordinary circumstances the saving of expense would be but small, and such a course is not recommended. If the land is subject to an existing lease of any considerable length, a formal assurance of the legal estate should certainly—in order to avoid possible difficulties—be taken from the vendor.

It will usually be for the purchaser's own interest that he should apply for registration promptly, but on a sale of leasehold land, or grant of a lease, the vendor should insert in the contract a stipulation binding the purchaser to register immediately on completion.

If the purchaser has taken a formal assurance from the vendor which would, but for the Acts and Rules, have vested in him the legal estate, he will, upon being registered as proprietor, obtain this legal estate—though it will, as pointed out *ante*, p. 144, be extinguished or merge in the registered estate. If the vendor has not purported to assure the legal estate to the purchaser, it will of course remain in the vendor—as a technical right of no practical value to the vendor himself.

It will be for the purchaser to consider whether he should apply for registration with possessory, good leasehold, or absolute title.

One advantage of applying for possessory title is that he is registered as proprietor practically at once; the further advantage of an absolute or qualified title can also be obtained by applying for an absolute or good leasehold title immediately after applying for possessory title, and this has also some advantages as regards the fees payable (*ante*, pp. 72, 78). A purchaser of leasehold land will not usually be able to apply for—or at any rate to obtain—absolute title, since he cannot, in the absence of express stipulation in the contract, investigate the lessor's title.³

ii. Where the purchase money, or part of it, is to be secured by a mortgage to the vendor, the purchaser is not obliged to register—*i.e.* he incurs no penalty or liability for not registering; the legal estate will remain in the vendor, whether he purports to convey it to the purchaser or not, and the purchaser does not therefore require to register the land merely for the sake of divesting his vendor of the legal estate. He may, however, prefer to register for other reasons; whether he does register at once will probably be a matter of bargain between the parties. When the mortgage is paid off and reconveyance taken, the purchaser would have to register in order to get the legal estate out of his vendor-mortgagee. The sale and mortgage transaction can, however, be carried out on the footing of the purchaser either (*a*) registering or (*b*) not registering.

a. If the parties agree that the purchaser shall register the land, it is again a matter of bargain how the transaction is to be carried out. The conveyance and mortgage might be completed without any reference at all to registration, and then the purchaser might apply for registration subject to the mortgage as an incumbrance; the mortgagee could then apply for registration of his title to the incumbrance under r. 175 if he wished, or take a registered charge in lieu of the mortgage. Another plan would be for the purchaser not to take a formal conveyance, but to apply for registration with the vendor-mortgagee's consent, and give him either an ordinary mortgage, but without any conveyance of the legal estate—which would, of course, still be in the vendor-mortgagee, or a statutory charge which would, under r. 96, be accepted for registration along with the purchaser's application to be registered as proprietor of the land. A third plan would be for an application for first registration to be made in the vendor's name, the purchaser being nominated as the person to be registered as proprietor, and giving the vendor a statutory charge for the amount left on mortgage. On the mortgage being paid off and discharged, the legal estate could, if thought desirable, be formally conveyed to the person entitled to have it; but, if the registration

³ V. & P. Act, 1874, s. 2; Conv. Act, 1881, s. 3 (1).

were with absolute title, it would be quite immaterial whether it were so conveyed or not. The question of the form and contents of the registered charge will be dealt with later on in sec. 2, sub-sec. 2—"Mortgages."

b. If the arrangement were that the land was not at once to be registered, the conveyance and mortgage would be completed in the ordinary manner; the only difference would be that the mortgage would contain a covenant by the purchaser not to register the land during the currency of the mortgage, and that a caution under s. 60 against the registration of the land would be entered by the vendor-mortgagee. Such a covenant not to register would seem to be binding on any purchaser of the equity of redemption, whether he had notice of it or not.⁴

2. Where the vendor has not the legal estate vested in him, it may be: (i.) in a mortgagee; (ii.) in a trustee for the vendor; (iii.) outstanding altogether, and beyond the control of the vendor.

i. If on a sale of freehold land the legal fee simple be vested in a mortgagee, who is not intended to be at once paid off, the purchaser may postpone his registration until he desires to get in the legal estate, when, of course, he must register in order to do so. If he prefers to register at once, he can, of course, do so, assuming he has made no stipulation on the subject; the mortgage will be entered in the charges register of his land as an incumbrance, and the mortgagee's rights will not be affected, even if the mortgagor be registered with absolute title.⁵ If the mortgage has been effected by creation of a term of years, the purchaser must, of course, register, unless he is content to leave the legal fee in the vendor. The same distinction holds, in the case of leasehold land, between a mortgage by assignment and a mortgage by sub-demise.

ii. In ordinary cases, where the legal estate is in a trustee for the vendor, the vendor will have to see that the legal estate is conveyed to the purchaser or as he directs. If the purchaser does not take a conveyance of the legal estate he need not register unless he wishes to do so. But he would have to leave the legal estate in the vendor's trustee; a conveyance to a trustee for the purchaser would, apparently, be a "conveyance on sale," to "a person" under s. 20 as much as if made to the purchaser direct, and that person therefore would not acquire the legal estate from the vendor's trustee. If the legal estate is not in the vendor merely by reason of the conveyance to him having been made subsequently to compulsory registration being introduced, the purchaser would be justified in refusing to complete until the vendor had registered the land,

⁴ See the principles laid down in *Rogers v. Hosegood*, [1900] 2 Ch. 388, as to covenants inhering in land.

⁵ *In re Winter* (1873), L. R. 15 Eq. 156; 1903, rr. 151, 152.

and thus either got in the legal estate by possessory registration, or rendered it nugatory by absolute registration. A conveyance by the vendor's vendor to the purchaser would, on registration by the latter, be equally satisfactory, but might not be in the power of the purchaser or his immediate vendor to obtain. In the event of the abstract of title disclosing the fact that the vendor had taken a conveyance which failed to give him the legal estate for want of registration, this would be a defect going to the root of the vendor's title, and until it was remedied time for making requisitions would not run against the purchaser.⁶ There seems, however, nothing to prevent this being provided for by a special condition throwing the first registration on the purchaser.⁷

iii. Where the legal estate cannot be got in by the vendor, and therefore cannot be vested at all in the purchaser, possessory registration merely for the sake of getting in the legal estate will, of course, be useless. A vendor with such a title would probably have already protected himself by special stipulations in the contract, and the purchaser would usually know that he could not get the legal estate.⁸ The purchaser would in no way be compellable to register under such circumstances; but if he got a holding title, as in *In re Williams and Parry's Contract*, he would be well advised to apply for registration with absolute title, and even possessory registration would be better than nothing. His title would, if only registered as possessory, improve with age, and if the land remained unregistered it would only be saleable under special conditions. The purchaser should therefore, in his own interests, follow the usual practice of registering at once with possessory title, even though no legal estate is thereby got in, and apply subsequently for absolute registration.

3. A more troublesome case is where the purchaser has to raise the purchase money, or part of it, by mortgage in order to complete the purchase with the vendor. The vendor will not complete by executing the conveyance until he receives the purchase money; the mortgagee will not complete by paying over the mortgage money until he receives a valid mortgage; and a valid mortgage over unregistered land usually implies that the mortgagee has the legal estate, which the purchaser cannot give until he himself has it by registering the land, which again he cannot do until he settles with the vendor. If, however, the conveyance, the mortgage, and the application for possessory registration of the purchaser, are all completed on the

⁶ See *In re Carriage and McDonnell's Cont.*, [1895] 1 I. R. 288, 296.

⁷ See *In re Mitchell and McElhinney's Cont.*, [1902] 1 I. R. 83. S. 16 (2) of the 1897 Act would not apply.

⁸ See, for instance, *In re Williams and Parry's Cont.* (1895), 13 Reports, 574, 72 L. T. 869; *In re Scott and Alvares' Cont.*, [1895] 1 Ch. 596, 2 Ch. 608.

same day, the whole transaction does not involve a very much greater degree of complication than any other transaction where a vendor has to be paid by means of a mortgage of the purchased property. The points for the protection of the mortgagee to be observed are: (i.) that he shall have a security which would, but for s. 20 of the 1897 Act, be complete; (ii.) that he shall get in the legal estate from the mortgagor as soon as possible; (iii.) that he shall have all the statutory remedies given by the Acts when once the land is registered.

i. The mortgagee can take, as part of his security, a mortgage in exactly the same form as he would take it independently of the Acts, with two additional provisions: (a) A power of attorney from the mortgagor in favour of the mortgagee, authorizing the latter, or his nominee, to execute on the mortgagor's behalf a conveyance of the legal estate to himself after application for registration with possessory title has been made by the mortgagor; (b) a covenant by the mortgagor to apply, immediately after application for possessory title has been made, for registration with absolute title.

a. The legal estate probably cannot be conveyed by the mortgagor before he himself has it, and the power of attorney, which may be given to the mortgagee himself, or a nominee—as, for instance, his solicitor, is intended only to facilitate completion, by making it unnecessary for the mortgagor and mortgagee to attend personally at the registry on the day when completion takes place and application for possessory registration is made. There appears to be no objection to giving the mortgagee a power to convey to himself.⁹

b. The mortgagee's investigation of the mortgagor's title—i.e. the title of the mortgagor's vendor—is not likely to be less, but rather more, strict than the investigation to be made by the registry on an application for absolute title; the mortgagee can usually therefore rely on his mortgagor obtaining absolute registration if applied for, and it will be to his own interest that the mortgagor should be registered with absolute title. A power of attorney might, if thought desirable, be added, authorizing the mortgagee to make the application, but will hardly be necessary.

ii. If the registration of the mortgagor with absolute title could be effected immediately on completion of the mortgage, there would, in cases of ordinary freehold land in possession being mortgaged, be no occasion for either the mortgagor or the mortgagee to trouble about getting in the legal estate from the mortgagor's vendor. That an absolute title will be registered cannot, however, be said to be perfectly certain, and in any case some months will probably

⁹ See *Furnivall v. Hudson*, [1893] 1 Ch. 335.

elapse before the registration is completely effected. In the meantime the mortgagee must have the protection of the legal estate. In the cases, too, of freehold ground rents—*i.e.* freehold land subject to long leases, and of leasehold land, it is better to get in the technical legal estate in order to avoid all possible difficulties in enforcing rights against persons in possession.¹⁰ In order to ensure that the legal estate shall not get into other hands, an application for registration with possessory title should therefore be made by the mortgagor—the purchaser in the sale transaction—on the day on which completion of the sale and mortgage takes place, and immediately afterwards—on the same day—a short deed conveying the legal estate to the mortgagee should be executed by or on behalf of the mortgagor; this deed may conveniently be endorsed on the main mortgage deed. If the sale, mortgage, and application for registration, can be carried out on the same day, there seems to be no necessity for lodging a priority notice under r. 95. But this might be done as a further measure of precaution, if desired, and if a priority notice were lodged the occurrence of an interval of time between the completion of the sale and mortgage, and the application for registration, would be less material.

There seems to be no reasonable doubt that the conveyance, executed by the purchaser immediately after delivery at the registry of his application, will pass the legal estate to the mortgagee. This depends, of course, on the legal estate duly vesting in the purchaser prior to his execution of the conveyance. Assuming that the purchase deed executed by the vendor is sufficient, but for s. 20 of the 1897 Act, to pass the legal estate, s. 20 enacts that it shall not pass until registration takes place. The effect of r. 22 appears to be that the registration relates back to, and takes effect from, the moment of the delivery of the application for possessory registration; under the doctrine of "relation back," as illustrated by actions for trespass and for mesne profits, and by acts done by, and actions brought by, executors and administrators,¹¹ the conveyance executed by the purchaser, subsequently to the delivery of the application for registration, takes effect on the footing of the conveyance to him being a valid conveyance of the legal estate. It seems possible, indeed, that the registration itself might be held to relate back to the execution of the conveyance to the purchaser, so as to defeat any other intermediate conveyance of the legal estate by the vendor, on the principle by which an admittance to copyhold relates back

¹⁰ See *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631.

¹¹ *Butcher v. Butcher* (1827), 7 B. & C. at 401, 81 B. R. at 238; *Brasier v. Hudson* (1836), 8 Sim. 67, 42 E. R. 106; *Tharpe v. Stallwood* (1843), 5 Man. & Gr. at 774, 63

R. R. at 486; *In re Pryse*, [1904] P. 301, 305. As to relation back of admittance to copyholds, see *Vaughan v. Atkins* (1771), 5 Burr. 2764; *Scriven Copyh.* (7th ed.), 97, 98.

to the surrender;¹² but even so, this would probably not make a conveyance of the legal estate to a mortgagee or other person valid, if executed before registration had vested it in the purchaser. A conveyance, therefore, at some time subsequent to the delivery of the application for possessory registration, seems necessary in order to pass the legal estate from the purchaser, and it seems sufficient if it be made the moment after the delivery of the application.

iii. In order to get the full benefit of the mortgagor's registration, whether with possessory or absolute title, it is necessary that the mortgagee should treat the security as given over registered land, and should, besides an ordinary mortgage with the additional provisions already mentioned, and the endorsed conveyance of the legal estate, take a statutory charge. This charge will, under r. 96, be accepted for registration together with the application for registration of the land with possessory title, and will be registered if and when the land is registered. The form and contents of the charge will be dealt with later on in sec. 2, sub-sec. 2—"Mortgages." The registration of the mortgagor's title as absolute—if and when this takes place in due course after investigation of the title in the registry—will not involve any act or proceeding on the part of the mortgagee other than having his charge certificate—supposing one to have been issued whilst the registration remained possessory—altered to accord with the fact of the title to the land being registered as absolute or qualified, etc.

In practice, the mortgagee often insists on having the custody of the mortgagor's land certificate, and also on having a restriction entered on the register against the mortgagor—the proprietor of the land—transferring the land during the currency of the mortgage without the consent of the mortgagee—the proprietor of the charge. These matters will be referred to later on under transactions with registered land; it will be submitted that neither of these precautions is necessary, unless under exceptional circumstances.

SECTION 2.—TRANSACTIONS ON THE REGISTER.

SUB-SEC. 1.—Assurances for value other than settlements.

SUB-SEC. 2.—Mortgages.

SUB-SEC. 3.—Settlements and voluntary assurances.

SUB-SEC. 1.—*Assurances for Value other than Settlements.*

Assurances of registered estates and interests—by which is meant alienation and creation of proprietary interests, as distinguished from

¹² *Vaughan v. Atkins, supra.* The distinction between registration which forms part of the ceremony of conveyance, and thereby relates back to the date of execu-

tion, and registration which operates solely by avoiding a prior deed, is pointed out in *Carlisle v. Whaley* (1867), L. R. 2 H. L. at 418.

incumbrance merely by way of mortgage—usually consist of the complete transfer or alienation of the registered interest. Partial interests, in the sense of ownership for a period of time less than the period in respect of which the land is registered, cannot be created on the register; but some partial interests—partial in a sense otherwise than as regards duration—can be created on the register, as, for instance, an interest analogous in effect to such an incorporeal hereditament as a rent charge can be created by means of a permanent incumbrance on the land. This transfer or incumbrance, whether the result of a transaction of sale, exchange, or partition, is effected by the execution of an instrument in prescribed form, and the entry of the transferee, or person in whose favour the assurance is made, on the register as proprietor in place of, or in addition to, the existing proprietor. Transactions of exchange and partition only differ from transactions of sale of a piece of land in the form of the instruments by which they are carried out, and require only a little separate attention with respect to their completion and registration. The subject of the creation of interests analogous to rent charges must be dealt with entirely by itself. It will therefore be convenient to divide the present subject-matter into: (I.) Complete alienation of the land itself or the interest in it; (II.) Creation of incorporeal interests in the land.

I. Alienation will be treated of under the following heads: (1) The contract or agreement for sale; (2) Investigation of title; (3) The formal assurance; (4) Completion, including registration. There are four divisions of estates and interests, viz. freehold land, leasehold land, charges, incumbrances (*ante*, p. 105); these will not always require separate mention, and will only be referred to individually when necessary.

1. The contract will usually show on its face that the land is registered, and whether with possessory, qualified, or absolute title; it is advisable to state precisely the nature of the registration. If the land is represented to be registered and is in fact unregistered, or vice versa, this would seem to be a material misdescription, entitling the purchaser to rescind; and if it were actually conveyed to the purchaser, he would still be entitled to have the conveyance set aside and the expense of the conveyance paid by the vendor.¹

The effect of an open contract on the rights of the parties may, of course, differ widely according as the land is registered with possessory, qualified, or absolute title. Every qualification of an absolute title, including the fact of the title being only

¹ See *Edwards v. M'Leay* (1815), Coop. 308, 2 Sw. 287, 14 R. R. 261; *Hart v. Swaine* (1877), 7 Ch. D. 42 (a copyhold case); *In re Beyfus and Masters' Cont.*

(1888), 39 Ch. D. 110. And so under the Australian system; *Skinner v. Australian and British Land Co.* (1889), 15 V. L. R. 674.

good leasehold, should be stated in the contract; if the title is possessory, any special conditions relating to the title prior to registration must be included in the contract, just as in the case of unregistered land. Notwithstanding that an argument to the contrary may be founded on the fact that some enactments of the Conveyancing Act, 1881, are expressly made applicable to registered land, it would seem that all the provisions of the Conveyancing Acts which are relevant, and not inconsistent with the Land Transfer Acts, apply to registered land;² it may, of course, be difficult sometimes to say whether a particular provision of the Conveyancing Acts is inconsistent with the Land Transfer Acts and Rules.

The rights both of vendor and purchaser are to some extent governed by the express provisions in s. 16 of the 1897 Act.

A vendor cannot usually, by reason merely that he is not the registered proprietor of the land, or of a charge giving a power of sale, refuse to procure the execution of an instrument of transfer in favour of the purchaser; under s. 16 (2) of the 1897 Act a vendor of registered land is bound, "notwithstanding any stipulation to the contrary," either to have himself registered, or to procure a transfer to the purchaser from the registered proprietor. This raises two difficulties: (i.) As to the meaning of "registered land;" (ii.) As to whether the enactment overrides certain other provisions in the Acts and Rules.

i. "Registered land" may well include land registered under the Land Registry Act, 1862; the provisions³ for transferring such land, without payment of fees or formal application, from the 1862 register to the present register upon registration of a transfer on sale, seem to favour this view.

"Registered land" does not seem to include interests excepted from the registration. The provisions of s. 127 (as amended), by which certain interests in registered land which are themselves excepted from the registration remain subject to the jurisdiction of the local Middlesex and Yorkshire registries, seem to require that interests in land thus kept on the local registers should be considered as removed altogether from the jurisdiction of the land registry and the Acts governing land on its registers. Where registered land is situated in a non-register county, by parity of reasoning the same classes of interests in the land which are excepted from registration appear to be constructively removed from the jurisdiction of the Land Transfer Acts for all purposes. Such excepted interests

² The sections which expressly incorporate certain provisions of the Conveyancing Act, 1881, are: 1897, s. 9 (1, 2), and s. 16 (3). And compare 1903, r. 336, in its relation to the Remuneration Order,

1882, r. 1.

³ See the orders of Jan. 1, 1876, and Dec. 29, 1897, printed in Br. & Shel. (2nd ed.), 537-539.

therefore, unless expressly placed on the register subsequently (r. 175), do not appear to be included in the "registered land" mentioned in s. 16 (2) of the 1897 Act. But in order to constitute such an excepted interest, the interest must be one which can be substantially separated for conveyancing purposes from the land on the register, not a mere claim, dating from before the registration, to have rectification on the ground that the title is possessory only. Instances of really excepted interests, which are not included in the "registered land," would be—in the case of possessory registration—the legal estate, and—in all cases—the unregistered reversion on a registered leasehold. And the interest might be "excepted" from, or included in, the "registered land" according as it was regarded as identical with, or distinct from, the land itself on the register. Thus, a mortgagee selling and conveying land actually on the register, but doing so by virtue of his paramount title under a mortgage created before the land was placed on the register, would be a "vendor of registered land;" but such a mortgagee selling his security only, and conveying the legal estate to the transferee of the mortgage, would not be selling the "registered" land for the purposes of s. 16 (2).

ii. Taking "registered land" in the sense above-mentioned, the next question is whether s. 16 (2) is in conflict with s. 9 (6) of the 1897 Act, r. 151, or r. 185. By s. 9 (6), and rr. 96, 104, and 105, a person who has, by virtue of the death, etc., of a proprietor, or an unregistered instrument of transfer, a right to be, but is not yet, registered as proprietor of the land, may in turn execute an instrument of transfer which will be as valid and registrable as if the person executing it had been then registered as proprietor; r. 185 is to the same effect with respect to an executor or administrator. It is submitted that these provisions can be read as constituting an exception to the enactment in s. 16 (2), and thus any conflict between the enactments will be avoided; s. 16 (2) seems to be directed against the possibility of a vendor having himself taken only an assurance off the register.

By r. 151, a purchaser from a person who has a title paramount to the registration may be registered as proprietor notwithstanding that a transfer from the registered proprietor cannot be obtained. This case may also, it is submitted, be taken to be an exception to the provisions of s. 16 (2). If this construction be correct, there will thus be two cases in which a vendor need not get himself registered, nor procure the execution of a transfer from the registered proprietor direct to the purchaser: where the vendor's title is paramount to the registration, and where the vendor is himself then entitled to be registered.

A purchaser, who desires to have covenants for title from a vendor who is registered with absolute title, will have to stipulate expressly for them in the contract. By s. 16 (3) of the 1897 Act a vendor, "in the absence of express stipulation," cannot be required to give any covenants for title, if registered with absolute title, and, if his registration is less than absolute, can "only be required to covenant against estates and rights excluded from the effect of registration;" the implied covenants under s. 7 of the Conveyancing Act, 1881, are to be construed accordingly. Besides these implied covenants, some covenants are also implied by the Land Transfer Act and Rules, and others may be expressly added and registered;⁴ these will be referred to later on. It is not clear whether a purchaser is entitled, as a matter of course, to have the covenants in respect of the excepted interests, under a possessory or qualified title, in a separate deed, or whether he is only entitled to add them to the statutory instrument of transfer—if he wishes for express covenants. Unless some outstanding interest is being got in, which would necessarily be done by a separate deed, there seems to be no occasion for the vendor to execute more than the prescribed statutory instrument, modified according to circumstances; if the purchaser desires to have a separate deed of covenants for title, or a separate conveyance, he should stipulate expressly for this. Under ordinary circumstances, too, and where the registration is with absolute title, there seems no reason why the statutory acknowledgment and undertaking as to documents—if one is required—should not be inserted in the statutory instrument of transfer.

Under some circumstances, however, the purchaser will do well to stipulate in the contract for a separate deed or document being executed by the vendor and delivered to him. Where the registration is possessory only, it is better for the purchaser to have any acknowledgment and undertaking as to documents in his own possession. And so where any interest excepted from the registration, whether the registration be absolute, qualified, or possessory, is to be assured—even though appurtenant to the registered land itself, it seems better that the purchaser should stipulate for a separate conveyance of the excepted interest. An instance of this kind of interest would be a right of way, or other easement. If the easement is actually registered, and the dominant and the servient land is each accurately defined, there will, of course, be no necessity for a separate conveyance.

It seems probable that the rights, with respect to evidence and length of title to interests excepted from the registration, which a purchaser would have under an open contract, may be restricted

⁴ 1875, ss. 24, 39; 1903, rr. 132, 133.

by special conditions. It is not perfectly clear that the vendor has the same right to make special conditions as he has in the case of ordinary unregistered land, because sub-s. 1 of s. 16 of the 1897 Act differs from sub-ss. 2 and 3 in omitting all mention of express "stipulation"—forbidden in sub-s. 2 and permitted in sub-s. 3. By sub-s. 1, the purchaser cannot require any further evidence of the vendor's warranted title than is afforded by the register, ~~nor any further evidence as to rights and liabilities not deemed~~ ~~incumbrances under s. 18 of the 1875 Act than a statutory declaration~~; with respect to interests not warranted by the registration—i.e. excepted from registration—he may require, as to "incumbrances entered on the register as subsisting at the first registration," "evidence of the title to" them or of their discharge, and, as to excepted interests, such evidence as he "would be entitled to if the land were unregistered." The enactments restricting the purchaser's rights being for the benefit of the vendor, there seems to be no reason why the latter should not be able to contract himself out of these enactments and agree to furnish the purchaser with—for example—better evidence than a statutory declaration as to the matters mentioned in s. 18. In the same way the enactments conferring on the purchaser full rights of requiring evidence of the vendor's title being for the purchaser's benefit, there seems no reason why he, in his turn, should not be allowed to contract himself out of the enactments and waive what would be his rights under an open contract, as in the case of unregistered land.⁵

It is at present doubtful whether, in the absence of express stipulation, the purchaser could insist on the vendor delivering the instrument of transfer at the registry office, and obtaining the due registration of the purchaser. This point will be dealt with subsequently. In the case of stock registers, the person who tenders for registration a forged instrument of transfer not only impliedly warrants the genuineness of the instrument, but also impliedly contracts to indemnify the custodians of the register against any loss which they may sustain by registering the forged instrument.⁶ It is possible that this principle may be held to apply to the land registry; in that case the liability of the purchaser could only be avoided by the tender and request for registration being made by the vendor. Accordingly it may be advisable for the purchaser to stipulate in the contract that his registration should be carried out by the vendor—of course at the purchaser's expense, so far as payment of registry fees is concerned. This is also particularly advisable—though on another ground—if the purchaser is not to receive an

⁵ See *Wilson v. McIntosh*, [1894] A. C. 129.

⁶ *Sheffield Corporation v. Barclay*, [1905] A. C. 392.

instrument of transfer executed by the proprietor then actually on the register; the possibility of mistake or delay is increased by the existence of anything like a chain of title between the registered proprietor for the time being and a proposed successor on the register.

In the case of registration with less than absolute title, the question of the legal estate may have to be considered by the vendor and provided for in the contract. In the case of a qualified title, the purchaser is entitled, in addition to the evidence afforded by the register, to all usual evidence "as to any estate, right, or interest excluded from the effect of the registration." If a qualification consisted of the exception of any interest in consequence of the legal estate not being vested in the first proprietor, the vendor would have to account for the legal estate, and show that it did not protect any beneficial interest, up to the time of completing the sale. In the case of a possessory title the purchaser is only entitled, in addition to the evidence afforded by the register, to all usual evidence "of the title subsisting or capable of arising at the first registration;" if the legal estate had not been vested in the first proprietor, the vendor would have to deduce the title to it down to the time of sale, and, if not got in and conveyed to the purchaser, would at least have to show that it was in a bare trustee and protected no beneficial rights. But in the event of the legal estate having been vested in the first proprietor, it is submitted that the vendor will have done all that is necessary if he proves this, without deducing the title to the legal estate any further. The legal estate appears to be extinguished in the registered estate (*ante*, p. 144), where these are united in the same person, and from the date of registration the registered title is, with respect to the practical abrogation of the legal estate, in the same position as though the registration were with absolute title.

2. What the vendor is to do, and what the purchaser is to dispense with, with respect to the purchaser's investigation of the vendor's title, may or may not appear expressly on the face of the contract. The following observations only apply, of course, so far as the contract is silent.

In the case of land registered with absolute title, and subject to no incumbrances other than those created subsequently to the first registration, a purchaser cannot require, by way of abstract of title, more than a copy of the land certificate as it appears with all entries in the register noted on it up to date. But if there is a considerable number of cancelled entries, or if there are any entries of considerable length, there seems to be no reason why the vendor should furnish the purchaser with more than a copy of the entries

still uncanceled, or with more than a brief summary of the lengthy entries. It would, indeed, seem to be sufficient, where the title has been registered as absolute, and without any incumbrances existing at the time of first registration, for the vendor to give the purchaser sufficient particulars to enable him to find the land on the register, together with an authority to inspect the register.⁷ The purchaser is only entitled to the evidence afforded by the statutory declaration, as to matters not deemed incumbrances under s. 18 of the 1875 Act, and could hardly be entitled to any abstract of title with respect to any of such rights or liabilities as were not entered on the register. Where, however, evidence is required of the existence or non-existence of rights which are excluded from the effect of registration, the ordinary conveyancing practice should, apparently, be followed, and an abstract of the vendor's title with regard to those rights delivered to the purchaser, as a preliminary or aid to his investigations. Possible rights to the land may be excluded from the registration on any one of three grounds: (i.) They may be incumbrances subsisting at first registration with absolute title; (ii.) The title may be qualified (including good leasehold), and these rights expressly excepted from the registration; (iii.) The title may be possessory, and so only warranted as from the first registration, and subject to any adverse rights then subsisting or capable of arising.

i. If the title to the incumbrance has itself been registered, as well as entered in the charges register of the land on which it is an incumbrance, or if—without being so registered—it has been discharged and an entry made on the register accordingly,⁸ any abstract of title required may consist merely of a statement or copy of the entries on the register. But if the title to the incumbrance has not been registered, and it is not to be discharged, or only discharged out of the purchase money on completion, then the purchaser will have to investigate the title to it in the usual way, and an abstract of the title to the incumbrance of the usual kind should be furnished by the vendor.

ii. Where the registration is with qualified title (including good leasehold), the interests excepted from the registration may be: (a) Particular interests the title to which has not been satisfactorily shown; (b) All estates and interests prior to a specified date; (c) The lessor's title, in the case of leasehold land.

a. The particular interest excepted may, of course, be the legal estate in the fee simple of the whole of the land, or the legal or equitable interest of one or more persons, or in respect of part of

⁷ 1875, s. 104; 1897, s. 16; 1903, r. 284. 1875, s. 19; 1903, rr. 216, 217.

⁸ 1903, rr. 175–181. As to discharge:

the land, etc. Whatever the nature of the excepted interest, the title to it must be deduced by the vendor, and investigated by the purchaser, down to the date of completion, an abstract of title to the excepted interest being furnished and verified in the usual manner. It may, of course, be discovered that the excepted interest has been got in by some previous registered proprietor, and in that case it will probably have merged in the registered estate; deduction and investigation beyond that point will not then be necessary, since the "qualification" to the otherwise absolute title will then have ceased to exist.

b. If the "qualification" consists of an exception of all estates, etc., prior to a given date, the title of the proprietor will in effect be the same as though the land had been registered with possessory title at the date specified, and the same considerations will apply as in the case of possessory registration, to be referred to a little later on.

c. If the only exception be the lessor's title in the case of leasehold land, the title will be good leasehold, which is merely one form of qualified title. In the absence of express agreement the purchaser will not be able to call for the lessor's title, so that no question of investigating any but the registered title can arise. If the purchaser has the right of investigating the lessor's title as part of his vendor's title, the deduction and investigation will be made in the usual way, but will only be carried down to the time of the registered lease being granted. Any subsequent transaction with the reversion will not affect the title to the leasehold land.

iii. Possessory title—and also qualified title where the qualification consists in all estates and rights prior to a certain date being excepted from the registration—differs from a title qualified by the exception of some individual estate or right, in being sharply divided into two periods of time—before and after the registration of the land; the title of the first period is unwarranted, whilst the title of the last period is warranted, subject only to the possibility of the unwarranted title turning out to be paramount. The unwarranted title must be deduced and investigated by the delivery and verification of an abstract of title in the usual way; but whether the deduction and investigation are to stop at the date of first registration—where the warranted title begins, or are to be carried down to the time of sale and completion, will depend on the nature of the unwarranted title, *i.e.* during the first period. If a perfect title—legal and equitable—can be shown in the first registered proprietor, there is no necessity to abstract or deduce any title subsequent to the first registration other than the registered title; the unwarranted title, in fact, is extinguished and disappears. The

abstract of title proper will end with the title of the first proprietor, and any further abstract, if one be required, will consist of statements or copies of entries in the register, so far as the main title to the land itself is concerned, and apart from collateral rights such as mines and easements. But should the title of the first proprietor have been imperfect in any respect, it will be necessary to carry on the deduction and investigation of the unwarranted title—as distinct from the registered title—down to the time of sale, so that the title off the register may be considered and judged of as a whole. It may be that at some point subsequent to the first registration the title will be found to have been made good, or the outstanding interests got in by a registered proprietor; if the latter, these interests will probably merge in the registered estate and the necessity for further deduction will cease. The most serious difficulty will, of course, exist where the first proprietor's title is defective by reason of the legal estate being outstanding; this question is referred to *ante*, p. 157, and should form the subject of a special condition by the vendor in the contract.

The abstract of title, so far as it is an abstract in the usual sense of being an epitome of successive assurances or devolutions, will be verified in the usual manner; so far as it consists of a statement or copy of entries on the register, the register itself must be inspected, and for this purpose an authority must be furnished to the purchaser by the vendor. The purchaser should also ascertain that the land certificate is in the vendor's possession or deposited at the registry, and not deposited by way of security with another person.

The sharp division between the warranted and the unwarranted title is particularly noticeable when the question of searches is dealt with. With respect to the unwarranted title the same searches must be made as in the case of unregistered land; with respect to the warranted title, it appears to be unnecessary for a purchaser to make any search other than at the Land registry in the register of the land in question. The precise language of the Acts as to the title acquired by a duly registered purchaser, and the lengthy enumeration of liabilities to which the land is subject without these necessarily appearing on the register,⁹ seem to furnish a strong argument in favour of the Acts being interpreted as special Statutes, which are not affected by general legislation—prior or subsequent—imposing charges or burdens on land; such general charges do not seem, as a rule, to override and be paramount to the estate of the registered proprietor for the time being.¹⁰

⁹ See 1875, ss. 7, 13, 18 (as amended), 30, 35; 1897, s. 13 (3); 1903, rr. 67, 140.

¹⁰ But see and consider *Lord Advocate*

v. Moray, [1905] A. C. 531, the principle of which seems to apply to land registered under the Land Transfer Acts.

The Rules provide for official searches being made, and the result embodied in an official certificate by the registry officers; special provision is made for exempting solicitors, and such of their clients as may be trustees, from liability in case the search certificate turns out to be incorrect (r. 293), but nothing is said as to the possible loss to a client who is not a trustee.¹¹ It is conceivable that a transaction might be completed on the faith of an official search certificate which, on registration being applied for, turned out to be incorrect. Since an official search certificate does not carry with it any express warranty of its correctness, it does not seem advisable to rely altogether on an official search. The search can be made at the same time that the register is inspected, and if desired a caution or (with the vendor's consent) a priority notice¹² can be immediately afterwards lodged. It is conceived, however, that this need only be done under exceptional circumstances and in large transactions, and that the purchaser will ordinarily be as safe as when dealing with unregistered land, if he leaves the vendor in the position of ostensible owner until completion.

Practically, all inquiries which are usually made by a purchaser of an interest in unregistered land should be made by a purchaser of an interest in registered land, even when the vendor is registered with absolute title. Thus, where the property consists of land in the occupation of tenants, inquiries should be made of the tenants; when the property is vacant land, it should be ascertained that no intruder is in possession, etc. The interests of tenants and of persons in possession are expressly protected by s. 18 of the 1875 Act. So if the property consist of a mortgage effected by a registered charge, inquiries should be made of the mortgagor, and the state of accounts between him and the mortgagee ascertained, with a view to afterwards giving the mortgagor notice of the transfer. Notwithstanding that by the combined effect of ss. 23 and 40 of the 1875 Act the mortgagor would, upon the transfer of mortgage being registered, be indebted to the new mortgagee in lieu of the former proprietor of the charge, the new proprietor of the charge would probably be held bound by any payments made by the mortgagor to his former mortgagee before, or in ignorance of, the transfer.¹³

The subject of requisitions, and their answer, does not seem to require special mention. The abstract of title will not, of course, be complete unless it is shown that the purchaser is either to receive a statutory transfer from a registered proprietor, or person entitled to be registered as proprietor, or otherwise be placed on the register by virtue of a paramount title.

¹¹ 1903, rr. 289-294, f. 68.

¹² 1875, s. 53; 1903, rr. 117, 226-233.

¹³ This is so under the Australian

system: *Nico v. Bell* (1901), 27 V. L. R. 82; the decision would seem to apply to the English Acts, a fortiori.

3. The preparation of the formal assurance of the property sold being a matter for the purchaser, he is ordinarily entitled, in the absence of express stipulation, to take his conveyance in any reasonable form which does not increase the expense incurred by the vendor in perusing and approving of it. It seems possible that the question of the proper method of assuring registered land may give rise to differences of opinion between vendors and purchasers. In the absence of stipulation a purchaser may take his formal assurance in one of three ways: (i.) By a statutory instrument of transfer in the prescribed form without addition; (ii.) By a statutory instrument containing additional clauses and provisions; (iii.) By either of the two last, together with a deed or deeds containing a conveyance of the property or covenants relating to it, and not intended to be registered. On each of these something has already been said in connexion with the contract (*ante*, p. 164).

i. *Prima facie* the ordinary and proper method of assuring registered land, or a registered charge or incumbrance, should be by means of an instrument in the form prescribed by the Acts and Rules. Departures from this method of assurance should rather be considered the exception than the rule. A practitioner who makes it, for instance, a rule to add to the statutory forms, or to take in addition a conveyance by ordinary deed, is merely following the analogy of ordinary conveyancing in a blind fashion, forgetting that the whole system of alienating registered interests is based on principles quite different from those which govern the alienation of unregistered land.

Where only the estate or interest on the register is to be taken, and there are no rights off the register to be assured by persons other than the registered proprietor, then—whether the title be absolute, qualified, or possessory—nothing is gained by making the registered proprietor execute an additional deed of conveyance; and if nothing is gained by so doing, it is waste of time and bad conveyancing to do it. The same reasoning applies, though not exactly in the same degree, to the practice of inserting additional clauses and provisions in the statutory forms of instruments; if it is only the registered interest, and only the powers conferred by the Acts and Rules, that are required, no attempt should be made to effect more by means of the statutory instruments. Cases in which it is really advisable to add to the prescribed forms will be of more frequent occurrence than cases in which additional deeds are desirable; but the same rule should be adopted—only to add clauses when really necessary, and when some definite purpose is to be served. The mere fact that the title is qualified or possessory, or that in the case of a possessory title there is a known defect in the unwarranted title, will

not make it any the more advantageous—and therefore proper—to insert additions in the statutory instrument of transfer, or to take an additional deed of conveyance, etc. Instances of cases in which assurances should be thus taken will be given subsequently, and will serve to show by contrast when a statutory instrument in its prescribed and unaltered form may safely be relied on.

The statutory instruments of transfer on sale, and also those for effecting partition and exchange, are extremely simple in frame, and there is no substantial difference in form between them *inter se*, nor between the instruments prescribed for transferring freehold land, leasehold land, and a charge.¹⁴ The situation of the land, and the number of the title in the register, are given in a heading, and the instrument (after stating the date) consists of the following, modified according to circumstances: "In consideration of £—— I, A. B. of, etc., hereby transfer to C. D. of, etc., the land comprised in the title above referred to;" it is then executed as a deed and attested.¹⁵ The forms above referred to are those for use when land or a charge (including a registered incumbrance or mortgage) is to be transferred "in the prescribed manner."¹⁶ In all these instruments the word "transfer" is the operative word, and the form of the instrument is analogous to the form used in transfers of stocks and shares, being the simplest possible words which could be used to indicate the intention of the transferor to alienate his estate or interest and vest it in the transferee. The alienation thus effected—subject to due registration subsequently—is clearly analogous in its mode of operation to the alienation of personalty such as stocks and shares, and has no resemblance to the alienation of unregistered freehold land, which proceeds on the feudal principle of limiting an estate to the alienee, notwithstanding the abrogation of subinfeudation. The alienation by statutory transfer also further resembles the alienation of stocks and shares—and also, in this respect, copyholds—in that it has to be "completed" by entry of the transferee on the register as proprietor; the nature of the interest taken by the transferee under this inchoate alienation is referred to *ante*, p. 151, and the strong resemblance of the Land register to a stock register is referred to *ante*, p. 84.

The prescribed form of instrument of transfer illustrates very strikingly, by being used for freehold land as well as leasehold land and charges, the tendency of the system to cast loose, not only from feudal principles and rules (*ante*, p. 37), but also from the conveyancing rules which are founded on the Statute of Uses. All the features which distinguish an ordinary conveyance of freehold land from an assignment of leaseholds, or a sale of chattels personal,

¹⁴ 1903, ff. 20, 21, 28–36, 41–43, 49, 50.

¹⁶ 1875, ss. 29, 34, 40; 1903, rr. 175–

¹⁵ 1903, rr. 107–110. The form given above in the text is from 1903, f. 20.

177. And see 1903, r. 126, *et seq.*

are absent. There are no words of limitation, and there is no reference to uses; neither is there any habendum, any receipt clause, or any covenant for title. In short, notwithstanding that the instrument is under seal, it appears to have, in its prescribed form, no efficacy as a conveyance of any actual estate in the land, any more than a surrender of copyholds, but, like the surrender, it confers only a right on the person named as transferee to be placed on the register in place of the transferor; until this is done the transferor is "deemed to remain proprietor of the" land or charge.¹⁷ This right to be registered is none the less a right of property, because it cannot be, in the case of freehold land, described in terms of the ordinary law relating to estates in land, and it is a right of property in the whole interest which is in process of alienation; it is submitted that this view is more in accordance with scientific jurisprudence, and less likely to lead to confusion, than a view which would adopt the analogy of an ordinary grant of land to a man without words of inheritance, and so would regard the statutory instrument as conferring an estate for life. When once the transferee of freehold land is registered—i.e. entered on the register as proprietor of the land—he takes the fee simple, which is only then divested from his transferor. This fee simple, although not conveyed to the transferee in the sense in which this would be understood of an ordinary deed of conveyance, does vest in the transferee as the result of execution of the statutory instrument and his registration as proprietor taken together, much as copyhold land vests on admittance as the combined result of the surrender and admittance.¹⁸ These remarks are applicable, mutatis mutandis, to transfers of leasehold land and charges.

Since English law recognizes an "estate" in land as a sort of metaphysical entity, it is sometimes a matter of importance whether an owner's "estate" is identical with or distinct from that of his predecessor in title. From this point of view the estate conferred on the new proprietor by "transfer" seems to be the same estate that his predecessor had, and not a new estate distinct from the preceding one as the registered estate of a first proprietor is distinct from the legal estate which it abrogates; the estate of the purchaser, when registered, is described in the Acts and Rules in terms substantially identical with those used to describe the estate of the first proprietor, except only that the estate of the purchaser is not subject to "unregistered estates, rights, interests, or equities" to which it might possibly be subject in the hands of the first proprietor.¹⁹ The

¹⁷ 1875, ss. 29, 34, 40.

¹⁸ See *Vaughan v. Atkins* (1771), 5 Burr. 2764, 2785, referred to *ante*, p. 159.

¹⁹ 1875, ss. 30-32, 35; 1903, rr. 140, 142. These correspond respectively with 1875, ss. 7, 9, 13; 1903, rr. 55-57, 59.

difference between an estate or ownership which is identical with, and one which is distinct from, the preceding estate or ownership, and the importance of this difference, are illustrated by the relation between the ownership of an intruder who gains a title under the Limitation Acts, and the legal estate of the dispossessed owner.²⁰ That the estate or interest of the registered transferee is identical with, and not distinct from, the estate of the transferor—or predecessor in title on the register—seems to be conclusively shown by the provisions for covenants of payment and indemnity being sometimes implied, and sometimes allowed to be inserted in the statutory instrument, on transfer of land which is subject to the payment of rent and observance of covenants.²¹ It would seem, however, that such—and any other—implied covenants would only arise, and that any express covenant inserted in a statutory instrument would only take effect, as between two successive registered proprietors; where proprietor A. executes an instrument of transfer in favour of X., or X. is his executor, etc., and proprietor B. gets on the register by virtue of an instrument of transfer executed by X.,²² then it would seem that a sort of privity of estate is constituted between A. and B. only, in the sense that A.'s estate passes directly to B., notwithstanding that under some circumstances privity of contract might possibly be constituted between B. and X., or between the registrar and B. or X.²³ So the estate of a mortgagor, or proprietor of land subject to a registered charge, would pass directly to the registered transferee on transfer from the mortgagee, or proprietor of the charge under his power of sale, in the same manner as on transfer from a registered proprietor through the intervention of an executor, etc., or a mesne transferee.²⁴

The covenants implied upon a transfer, by express enactment, differ according to the nature of the property. No such covenant is implied upon a transfer of freehold land, unless the land be subject to an existing rent; in such a case, by r. 132, covenants similar to those implied by s. 39 on a transfer of leasehold land are (if not negatived) implied, to the effect that the rent and covenants have been paid and performed by the transferor, and that they will for the future be paid and performed by the transferee. These covenants are also implied on a transfer of leasehold land, unless negatived; but if part only of the land held under a lease be

²⁰ See *Tichborne v. Weir* (1893), 4 Reports, 26, 67 L. T. 735; *In re Nisbet and Potts' Cont.*, [1905] 1 Ch. 391.

²¹ 1875, s. 39; 1903, rr. 132, 133.

²² See 1897, s. 9 (6); 1903, rr. 96, 104, 105; these are referred to *ante*, p. 163. The last paragraph in the sub-section seems to make no difference.

²³ As, for instance, if the doctrine as to stock registers laid down in *Sheffield Corpn. v. Barclay*, [1905] A. C. 392, were held to apply to the land registry: see *ante*, p. 84.

²⁴ See the form of the decree in *In re Richardson* (1871), L. R. 12 Eq. at 399, 13 Eq. 142, under the Land Registry Act, 1862.

transferred, the transferee's implied covenant is, by r. 10, or other payment of the apportioned rent and performance of the c provide so far as these relate to the part transferred.

Upon the transfer of a registered charge there appears also to be implied a covenant by the proprietor of the land with the new proprietor of the charge to the same effect as that implied with the original proprietor of the charge upon its creation. By s. 23 there is implied, unless negatived, a covenant, by the person who is proprietor of the land at the time of the creation of the charge with the "registered proprietor for the time being of the charge," to pay the principal and interest; this appears to raise an implied covenant by the mortgagor with each successive registered transferee of the mortgage, enabling the latter to sue directly on the covenant independently of s. 25 (6) of the Judicature Act, 1873. A registered incumbrance by way of mortgage may also be transferred in the same manner as a registered statutory charge,²⁵ but it is obvious that the enactment in s. 23, above referred to, will have no effect in raising any implied covenant by the mortgagor with the transferee of a mortgage of this kind; such a mortgage will usually contain explicit covenants and other necessary provisions.

There is also, perhaps, to be implied, as on assurances of property generally, a covenant for quiet enjoyment of the property transferred.²⁶ But since such a covenant only arises under a general rule of law, and not by virtue of any provision in the Acts or Rules, it might be held that, in the case above referred to, of an unregistered transferee X. intervening between two successive registered proprietors A. and B., A. would not be deemed to have covenanted with B. for quiet enjoyment, though possibly X. might be held to have done so. Some distinction might, of course, exist where X. was an executor, and where he was a purchaser.

ii. The following are instances of circumstances under which some addition to the statutory form of instrument of transfer is necessary or advisable :—

- (a) The title is registered as less than absolute.
- (b) The land is sold subject to a charge or incumbrance.
- (c) The land is subject to long leases or underleases.
- (d) Easements, reservations, or restrictive conditions are to be entered on the register.
- (e) The transaction is a partition.
- (f) There is likely to be considerable delay in registration of the transferee.
- (g) The purchasers are trustees.

²⁵ 1903, rr. 175-177.

²⁶ See *Seddon v. Senate* (1810), 13 East, 63, 12 R. R. 299.

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the most commonly thought advisable, and being registered with qualified or its for title, and acknowledgment and ts, with respect to the unwarranted to first registration. The statutory mentioned in the Acts or Rules, whilst the e which arise by the use of the approval owner," etc.—under s. 7 of the Convey- tioned, and the insertion of the appropriate lying them is expressly permitted.²⁷ It intended that these implied covenants for title should only, introduced so far as they may relate to the unwarranted title. The mention of the statutory covenants for title, and the omission of any mention of the statutory acknowledgment as to documents, is some argument for the view that it is not intended to permit the acknowledgment to be inserted in a statutory instrument of transfer; however, it is the practice of the registry to accept for registration instruments containing this addition.²⁸ Seeing that, apart from the accepted practice, the insertion of the acknowledgment is of somewhat doubtful validity, and that in any case it would be necessary for the person entitled to the acknowledgment to keep a copy of it, and also that it would be necessary to subpoena the registrar to produce the original if required in judicial proceedings—for all these reasons the preferable course is not to insert the acknowledgment in the statutory instrument, but to take it as a separate document. No note of the introduction of the statutory words implying covenants for title is entered on the register, nor does there appear to be any provision in the Acts or Rules which has the effect of constructively embodying instruments of transfer, etc., in the register so as to make them part of the register.²⁹ A proprietor would have no means of knowing whether any of his predecessors in title on the register had entered into covenants of which he could get the benefit, unless he inspected each instrument of transfer (r. 284).

In the event of any specific matter or defect in the unwarranted title being thought to require a special covenant, this, though possibly no objection would be taken in the registry office to its being inserted in the instrument of transfer, is much better made the subject of a separate deed.

b. No prescribed form is provided for the transfer of what, under the general law, would be called an equity of redemption—i.e. land

²⁷ 1897, s. 16 (3); 1903, r. 99.

²⁸ Br. & Shel. (2nd ed.), 89, 587.

²⁹ The only case in which documents not actually entered on the register are

part of the register, appears to be that referred to in r. 8, which allows charges and incumbrances, under certain circumstances, to be entered in a separate book.

or a charge subject to a mortgage-charge or sub-charge, or other incumbrance by way of mortgage, nor do the Acts and Rules provide for any implied covenant for payment or indemnity on the part of the purchaser, though it can hardly be doubted that the ordinary law would apply, under which such a covenant is implied.³⁰ By r. 133 covenants for payment and indemnity may be added to the instrument of transfer, and may be noted on the register; the rule mentions only "land," and expressly includes both the case of the incumbrance appearing on the register, and the case of the incumbrance being unaffected by the registration where the title is less than absolute. Whether the title to the land be absolute, qualified, or possessory, a covenant by the purchaser, to pay the principal and interest and indemnify the vendor, should therefore be inserted in the instrument of transfer, and, since this covenant will be noted on the register—and therefore in the land certificate, a covenant by a separate deed may usually—even in the case of title less than absolute—be dispensed with. The case of a registered charge being transferred subject to a sub-charge not being provided for in the above rule, the registrar might decline to note on the register any covenant for payment and indemnity; the covenant in this case may therefore be omitted from the instrument of transfer, but even if inserted, it should also be the subject of a separate deed, whether the title be absolute, qualified, or possessory.

In the absence of express agreement the covenant, to which the vendor is entitled upon the sale of property in mortgage, is probably one of indemnity only, as upon the sale of land subject to restrictive covenants.³¹ If it be desired that the purchaser should be directly liable to the mortgagee, this should be clearly expressed.

c. When the land is subject to long leases or underleases—the reversion being then often spoken of as freehold or leasehold "ground-rents"—it may possibly be advisable to insert in the instrument of transfer a clause expressly conferring on the transferee the benefit of the lessee's covenants and conditions in the leases, with power to sue in the transferor's name or otherwise, and to take advantage of rights of re-entry, etc. The cases of leases created before and after the first registration of the land, and the cases of the reversioner having and not having the technical legal estate, stand upon somewhat different footings. Whether the leases are registered—*i.e.* are registered leasehold land—or not, seems to make no difference. If notice of the lease has not been registered under ss. 50 and 51, the notice will, upon the lease being referred to in the instrument of transfer, be entered on the register.³²

³⁰ *Adair v. Carden* (1892), 29 L. R. Ir. 469; *Bridgman v. Daw* (1892), 40 W. R. 253; *Dodson v. Downey*, [1901] 2 Ch. 620.

³¹ See *In re Poole and Clarke's Cont.*, [1904] 2 Ch. 173.

³² Where the lease is expressly referred

If the leases have been created before first registration, a reversioner with the legal estate is in exactly the same position after as before registration; the mere fact that the legal estate is merged in the registered estate cannot affect his relation to the lessees, for if necessary the merger would be suspended in favour of the lessor.⁸⁸ But the estate of the registered transferee is not the same estate as that of the reversioner originally was as regards a lessee. If the legal estate becomes merged in the registered estate, so that it cannot be again granted away—and it is submitted this is the proper view to take (*ante*, p. 144)—there may at first sight appear to be some technical difficulty in the registered transferee, or new proprietor of the land, taking the benefit of the lessee's covenants and conditions in the lease as belonging to the reversionary estate. But although the benefit of the lessee's covenants, etc., was originally annexed to the legal estate, or ownership under the general law, of the lessor, and the registered estate, or statutory ownership, is a different estate or ownership from that previously existing, yet the effect of first registration is to confer on the first proprietor an ownership embracing all the rights which either at law or in equity belonged to the former ownership; in the words of s. 7, there is vested in the proprietor "an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto." Though the technical nature of the fee simple formerly enjoyed has now been changed by the statute, the new fee simple is described on the register in precisely the same terms as the former fee simple as regards the rights of property conferred by it, the ownership of it, and the incumbrances upon it. It is submitted, therefore, that the registered estate becomes the "reversionary estate" to and with which, under s. 10 (1) of the Conveyancing Act, 1881, the rent and benefit of the lessee's covenants and conditions are "annexed" and go; the concluding words of s. 10 (1) seem apt, if any express enactment were required, to confer upon the registered proprietor in virtue of his statutory estate the right to the rent and benefit of lessee's covenants, for he is "the person . . . entitled, subject to the term, to the income . . . of the land leased." If, then, the registered estate is the reversionary estate in privity with the lease, the benefit of the lease and incidental rent and covenants, etc., would pass to the new proprietor on transfer of the registered estate, and the intention that the benefit of the lease should pass would be clearly shown by the

to in the instrument of transfer, it appears that an additional fee is payable, as for entry of notice of the lease: *Br. & Shel.* (2nd ed.), 586. This regulation would not apparently apply if notice of the lease had already been registered.

⁸⁸ See *Capital & Counties Bank v. Rhodes*, [1903] 1 Ch. 631, on the question of merger, which was really the only question which it was actually necessary to decide.

insertion of some such words as are usually inserted in an ordinary conveyance of the kind—"subject to and with the benefit of the lease" (describing it). In order, however, to put the matter beyond a doubt, it may be advisable that the transferor should expressly purport to assign to the transferee the benefit of all rent, lessee's covenants, and conditions, in the lease (in the opening words of s. 10 (1) of the Conveyancing Act, 1881), which are vested in the transferor in any manner by virtue of the deed of lease, or the register, or otherwise. A grant of the technical legal estate, even if valid, seems objectionable as being out of harmony with the principles of the system. One practical objection to including such a clause in the instrument of transfer is that, if reliance is to be placed on it as conferring enforceable rights, each successive proprietor would have to investigate the chain of title on the register to see if such instrument of transfer contained a grant of the legal estate; this would sometimes be troublesome, and is quite at variance with the scheme of the system, by which the entries on the register for the time being uncanceled are the only relevant and necessary evidence of the registered title.

Where a lease has been created before first registration, but the first proprietor had not the legal estate at the time of his registration, the words "subject to and with the benefit of the lease," etc., should be inserted as a matter of course; but, if the absence of the technical legal estate be a defect in the title of the transferor and therefore of the transferee, it cannot be cured by any addition to the instrument of transfer. The question of the title of a proprietor registered without having the legal estate, as regards leases then existing, is referred to *ante*, p. 107.

Where a lease has been created subsequently to first registration, the only addition to be made to the instrument of transfer will be the words, "subject to and with the benefit of the lease," etc. Probably even these words are not strictly necessary, especially if notice of the lease has already been registered. The lease having been granted by the registered proprietor, his successor in title will have the benefit of the rent and covenants as reversioner.

d. Where any easements, reservations, or restrictive conditions, are included in the transaction, such of these as can be, and are not already, entered on the register should be expressly referred to in the instrument of transfer, for the purpose of being so entered.³⁴ There is a considerable advantage to the purchaser in having the easement entered on the register, and if possible accurately defined, especially with regard to the servient land.³⁵ It would be possible,

³⁴ See Br. & Shel. (2nd ed.), 586, 614, 625, for forms of statement of easement and application to enter on the register.

³⁵ 1875, s. 18 (as amended by 1897, sched. 1); 1908, rr. 269-282.

if the easement were thus registered and defined, to dispense with any other evidence of its creation and existence, and thus save the expense and trouble of supplying an ordinary abstract of the title to it on future sales. And where reservations in favour of the vendor are made, it is to the purchaser's interest that these should be registered if possible, and thus save trouble in proof for the future.

Where restrictive conditions are to be included in the instrument of transfer, a special form is prescribed, to which are added some notes by way of direction;⁸⁶ so far as any restrictive condition or covenant is for the benefit of any other land, it may be treated as an easement, and entered in the property register of that other land (r. 3).

e. Where money is paid for equality of partition it will be necessary to add to the prescribed form accordingly; the prescribed form of instrument of exchange does refer to this.⁸⁷ The prescribed form of instrument of partition is defective, and the statement of consideration given in Form 42 (Exchange) should be inserted. Form 43 (Partition) is framed with a complete disregard to the common law rule that a man cannot convey directly to himself, nor does it fall within the statutory rules which allow property, real or personal, to be conveyed by a man to himself and another jointly.⁸⁸ No question can, of course, arise as to the validity of the estates in severalty when the owners of the several pieces of land are once registered, but the frame of this particular form illustrates strikingly the scheme of the system as being one for making registration, and not execution of a deed, the method of assurance.

f. When the prescribed forms of statutory instruments are considered sufficient without substantial addition, this is so partly because registration of the person taking under the instrument is to be effected forthwith. Occasionally, however, it may be that registration is to be deferred, and in that case it may be advisable to so frame the statutory instrument that it may operate, as far as possible, as an assurance of the property independently of registration being effected. For this purpose the words "in fee simple" may be inserted in a transfer of freehold land whether on sale, or on exchange or partition. Having regard, however, to the form of the partition instrument, it would be necessary, under the supposed circumstances, for the co-owners first to transfer to some indifferent person as trustee, and then for the latter to transfer to the owners

⁸⁶ 1875, s. 84 (amended by 1897, sched. 1); 1903, r. 153, f. 41.

⁸⁷ 1903, rr. 154-156, ff. 42, 43.

⁸⁸ Law of Property Amendment Act,

1859 (22 & 23 Vict. c. 35), s. 21; Conv. Act, 1881, s. 50. A similar difficulty occurs in some of the Australian Acts: Hogg's Aust. Torrens Syst. 891.

in severalty, and it would be better that two separate instruments should be executed. Possibly, under some circumstances recitals might be introduced, though these are not usually required. A receipt clause is often inserted in an instrument of transfer, but there appears to be no advantage in doing this. If it be desired that the vendor's solicitor should receive the purchase money, he may be authorized to do so; this is the only useful purpose served by the receipt clause. The statement of the consideration in the instrument appears quite sufficient, apart from registration, to discharge the purchaser.

In some cases it may be advisable to insert a short covenant for further assurance pending registration of the purchaser, so that the vendor or his representatives may be compellable to do anything in their power to overcome any difficulty which may arise in the way of the purchaser's registration, when this is applied for. Upon the purchaser being duly registered the covenant would no longer be required, and would cease to operate.

g. Where the purchasers are trustees, it is advisable to take the transfer, if the property is land, to them "as joint tenants with no rights of survivorship between them." An entry will then have to be made on the register to the effect that the land cannot be dealt with by the survivor or survivors (in case of the death of one of the proprietors) except by order of the Court or the registrar; or the exact wording of s. 83 can be followed, if the number of trustees is large.³⁹

If, however, the property transferred is a mortgage-charge, the same considerations will prevail as on taking the original mortgage, and probably no non-survivorship clause will be inserted, and no restrictive entry made on the register; see the next sub-section (sub-sec. 2, "Mortgages").

Transfer on a change of trustees is dealt with in sub-sec. 3, "Settlements and Voluntary Assurances."

iii. Incidentally, something has already been said as to the proper occasions for requiring from a vendor an assurance both by statutory instrument—with or without additions—and also by an ordinary deed of conveyance or covenant. The rule, it is submitted, should be to require such a separate deed only when rights are to be vested in the purchaser which he will not otherwise get by means of a statutory instrument and registration. An instance of a case where it seems clear that no separate conveyance is required is that of sale by a vendor, registered with possessory title, but where the legal estate was in the first proprietor; nothing appears to be gained by the purchaser taking a separate conveyance, either from the

³⁹ 1875, s. 83 (3) (as amended by 1897, sched. 1); 1903, rr. 224, 225.

vendor, or from the first proprietor. On the other hand, if there are defects in the vendor's unwarranted title which are to be covered by some covenant beyond the ordinary formal covenants for title, this should be done by separate deed. The propriety of taking the statutory acknowledgment as to documents separately has also been referred to already (*ante*, p. 176). The reasons which will most commonly operate, in inducing the purchaser to require an additional conveyance of the land by ordinary deed, will be that the legal estate is not clearly shown to have been vested in the first proprietor. The necessity for a separate conveyance of an independent interest will most frequently occur where the purchaser takes an easement appurtenant to the land sold; whether the title be absolute or possessory, a separate conveyance will usually have to be taken where either the servient land is unregistered, or the easement is registered, in respect both of dominant and servient land, but is not accurately defined as to boundaries.

In some cases, and where the statutory instrument contains no covenants for title, it may be advisable to take a covenant for further assurance from the vendor, in case any difficulty, which would be removable by the help of the vendor, should occur in effecting registration.

4. Completion of a transaction of sale, etc., as between the vendor and purchaser, usually means, in the case of unregistered land, that the purchaser pays his purchase money to the vendor, and sees that the deed of conveyance is duly executed by the necessary parties, and that the estate or interest bargained for is otherwise duly vested in the purchaser, including the extinction or getting in of outstanding incumbrances. It will afterwards be for the purchaser to have the necessary documents stamped, and—in a register county—to register the conveyance; with this, however, the vendor has—quâ vendor—nothing to do. In the case of a transaction with registered land, completion as between vendor and purchaser is not confined to the matters immediately relating to the execution of the formal assurance, but includes: (i.) Execution of assurance, with necessary consents; (ii.) Payment of stamp duties; (iii.) Registration of the purchaser. These will be dealt with in order.

i. Rights which under the general law would be in the form of equitable estates, or actual incumbrances on the land, will often be evidenced, in the case of registered land, by restrictive entries on the register. These must, of course, either be withdrawn from the register, or the consent in writing of the persons entitled under them must be obtained to the registration of the purchaser, so as to give him the estate or interest to which he is entitled under the contract. And, if the purchase money is to be paid over before

the documents are delivered at the registry, it is essential that the form of every consent or withdrawal of restrictive entry should previously have been approved of by the registrar, so that, on the executed instrument of transfer, etc., being delivered at the registry, there may be no difficulty in the way of the immediate registration of the purchaser.

If there are any ordinary deeds or documents to be executed on completion, this will be done as usual, and nothing more need be said on this point. The execution of statutory instruments, intended for registration, is governed by rr. 107-110. These rules provide that instruments of transfer, charge, exchange, and partition are to be executed as deeds, and attested by a witness, who must add his address and description to his name. Other instruments may, but need not be, executed as deeds. It is implied by r. 110 that statutory instruments may be executed by attorney. If the power is not expressed to be irrevocable (under ss. 8 and 9 of the Conveyancing Act, 1882), a statutory declaration or other satisfactory evidence must be furnished that the power was, at the time of being acted on, unrevoked by the death of the principal or otherwise; in any case, the original power must be filed at the registry, if not filed at the Central Office.

Attestation is thus, by the above rules, made essential to the validity of instruments of transfer, etc., and apparently even if the instrument were registered, the register might be rectified, when rectification was possible, as against the transferee under an instrument invalid for want of due attestation. Under the general law a deed does not require attestation, unless this is directed by an instrument creating a power, or by some statute; but where attestation is required, this means attestation by some one who is not a party to the transaction.⁴⁰ Care should therefore be taken that no statutory instrument, which by the Rules requires attestation, is attested by a person who is also a party to the transaction.

The due execution of the statutory instrument of transfer must be seen to by the purchaser with as much care in the case of registered land as in other transactions. The principle laid down with respect to the Australian system—that a purchaser of land is under the same obligation as exists with respect to transactions with unregistered land, to ascertain the existence of the registered proprietor, the authority of the latter's agent (if any), and the genuineness of the instrument purporting to be executed by him⁴¹—applies equally to the English system. By s. 98 void dispositions are not the less

⁴⁰ *Freshfield v. Reed* (1842), 9 M. & W. 404, 60 R. R. 769; *Seal v. Claridge* (1881), 7 Q. B. D. 516; *In re Parrott*, [1891] 2 Q. B. 151.

⁴¹ *Gibbs v. Messer*, [1891] A. C. at 250, 258. And see the passage quoted *ante*, p. 38.

void for being registered, and notwithstanding the provisions of s. 7 of the 1897 Act for indemnity to persons who sustain loss through mistakes in the register, it is doubtful whether the person who tenders for registration, and gets registered on the faith of, an instrument which is either an actual forgery, or is not binding on the proprietor whose deed it purports to be, could resist rectification of the register, or recover indemnity upon the register being rectified in favour of the true owner.⁴² The liability which the purchaser may possibly incur, in being held to warrant the genuineness of the instrument by tendering it for registration—as in the case of a share register, has been referred to *ante*, p. 84.

In the case of instruments executed by attorney, any risk run, and liability incurred, by the purchaser with respect to the vendor's supposed execution of the instrument turning out to be invalid, is, of course, doubled; and the risk and liability are still further increased if the power is not expressed to be irrevocable under ss. 8 and 9 of the Conveyancing Act, 1882. If the principle of a share register does apply, and the person tendering an instrument of transfer for registration is to be held to warrant its genuineness, he will also be held to warrant the genuineness and authority of any power of attorney under which it may be executed.⁴³

By s. 9 of the 1897 Act the provisions of s. 8 of the Conveyancing Act, 1881, which entitle a purchaser to have a conveyance attested by his own solicitor or other appointed person, are made applicable to "transfers of registered land." The word "transfers" may here mean "instruments of transfer," though it seems more consistent with the use of the word in other places in the Acts that it should here refer to the transaction; in any case the effect of the enactment is that a purchaser may have the execution of the formal instrument of transfer attested by some person appointed by himself.

The proper execution by persons under disability must, of course, be attended to, including the examination of married women where their acknowledgment is necessary by reason of their marriage before 1883 or otherwise.⁴⁴

ii. Before registering the purchaser as proprietor—or, in the words of s. 83 (7), "registering any disposition of land"—the

⁴² A registered transferee under a forged transfer has been held entitled to indemnity on the register being rectified and his name removed from it; *A.-G. v. Odell*, [1905] W. N. 81. But the decision has been appealed from, and the case was heard by the Court of Appeal on the 7th and 8th Dec. 1905, when judgment was reserved.

⁴³ See *Starkey v. Bank of England*, [1903] A. C. 114. As to the risks run by

a purchaser dealing with the attorney of a vendor who may turn out to be insane, see *Daily Telegraph v. McLaughlin*, [1904] A. C. 776, reported below as *McLaughlin v. Daily Telegraph*, 1 Commw. L. R. 243; *Molyneux v. Natal Land Co.*, [1905] A. C. 555 (land in South Africa); *Elliott v. Ince* (1857), 7 D. M. & G. 475, 488 (copyhold).

⁴⁴ 1875, ss. 83 (4) (as amended by 1897, sched. 1), 87, 88; 1903, rr. 338-340.

registrar must see that stamp duty has been paid as if "the disposition to be registered had been an unregistered disposition;" if a registered transaction is partly carried out by an unregistered deed, the latter only is stamped, and is produced to the registrar as evidence of duty having been paid.⁴⁵ A purchaser will only be liable subsequently for unpaid succession or estate duty if these are entered on the register, or—the land being registered with possessory title—were in fact "subsisting or capable of arising" at the time of first registration.⁴⁶ If the purchase money is not to be paid over to the vendor in exchange for the executed instrument of transfer, it may be necessary for the purchaser to hand the amount required for stamp duty to the vendor, and arrange for him to have the instrument stamped.

iii. The ordinary conveyancing practice, by which the purchaser pays over the purchase-money to the vendor in exchange for the executed conveyance, is based on the principle that the vendor has then, by executing and handing over the conveyance, done all in his power to vest the property in the purchaser. As between the vendor and the purchaser this is "completion of the conveyance," even though it may not be "completion" as between the purchaser and his solicitor.⁴⁷ But in the case of registered land, dealt with by a registrable instrument, the execution of the instrument is only part of the assurance to the purchaser, and the "transfer" must—in the words of s. 29—be "completed" by entry of the purchaser on the register as proprietor. The exact formalities of registration are set out in rr. 111–122. With the consent of the vendor a priority notice may be lodged, thus ensuring the due registration of the purchaser on the executed instrument and other documents being delivered at the registry. Registration takes place according to the time and priority of delivery at the office. It is also provided that notice of registration having been applied for is to be sent to the person by whom an instrument purports to be executed, and registration is not completed until the expiration of three clear days. This is a procedure used by custodians of stock registers, and the advisability of its application to the Land registry seems doubtful.⁴⁸

By r. 271 registration may be completed provisionally notwithstanding that no filed plan can at once be made. Elaborate

⁴⁵ 1875, s. 83 (7); 1903, rr. 123–125.

⁴⁶ 1897, s. 13 (3); 1903, rr. 208–211.

⁴⁷ "Completion," for the purpose of determining what work is covered by the scale fee under the Remuneration Order, 1882, includes registration when the land is in a register county; *Grey v. Curtice*, [1899] 1 Ch. 121.

⁴⁸ The practice is referred to, with

regard to stock registers, in *Sheffield Corp'n. v. Barclay*, [1905] A. C. at 404, and some doubt there expressed as to its utility. In *Att.-Gen. v. Odell* (note 42, *supra*), notice was sent to the proprietor whose signature had been forged, but accidentally failed to reach her, thus enabling the forger to get the forged instrument registered.

provisions are also made by r. 157 for provisional registration on sale of part of the land comprised in a "title" or register; the instrument of transfer is to be executed in escrow, and if the registration be not cancelled within twenty-one days, the registration takes effect completely from the time of delivery of the instrument at the registry office. But for the express provision of this rule as to the instrument of transfer being an escrow notwithstanding registration, the registration would seem to be such a publication as would constitute complete delivery of the deed.⁴⁹

Where the land sold is the whole of the land comprised in a title, the land certificate will not be any longer required by the vendor, and will accordingly (if not already lodged with a priority notice) be handed over to the purchaser, and constitute some security—analogous to handing over the title-deeds—that registration will be effected in due course on delivery of the executed instrument and land certificate, etc.

A special rule relates to leasehold land held under a lease which requires assignments, etc., to be produced to the lessor. By r. 120 either the instrument of transfer before registration, or the land certificate after registration, may be produced, and this is to be a sufficient compliance with the covenant in the lease.

The case of leasehold land held under a lease which contains a prohibition against alienation without licence has been differently dealt with; rights arising by reason of alienation without licence must be excepted from the registration, thus making the registration qualified as to this,⁵⁰ so that it is always a matter for the purchaser—not the registrar—to see that licences have been duly given. Acceptance of rent by the lessor from the assignee, or with knowledge of the assignment, would be a waiver of any right of forfeiture,⁵¹ but the purchaser might have to satisfy himself—where the reversion had been dealt with—that the person who received the rent was the reversioner entitled to do so.

A forfeiture incurred by breach of the covenant not to assign without licence will be strictly enforced against the lessee,⁵² and "without the licence," or "without the consent," of the lessor, means without the consent, etc., being obtained before the assignment is made.⁵³ Unless "parting with the possession" is mentioned, "assignment" in covenants against assignment means "legal" or complete assignment.⁵⁴ As pointed out *ante*, p. 185, the execution

⁴⁹ See *Childers v. Childers* (1857), 29 L. T. 141, a case under the Bedford Level Act.

⁵⁰ 1875, s. 11 (amended); 1903, r. 62.

⁵¹ See *Roe v. Harrison* (1788), 2 T. R. 425, 1 R. R. 513.

⁵² *Barrow v. Isaacs*, [1891] 1 Q. B. 417;

Eastern Telegraph Co. v. Dent, [1899] 1 Q. B. 835.

⁵³ *Barrow v. Isaacs*, *supra*, at 422.

⁵⁴ *Horsely Estate v. Sleiger*, [1899] 2 Q. B. 79; *Gentle v. Faulkner*, [1900] 2 Q. B. 267.

of a deed relating to unregistered land at once vests the property in the grantee; whilst in the case of registered land the transaction is not "complete" until the transferee is registered. It would seem that, since the transfer of leasehold land would not be complete until registration of the transferee, or the instrument of transfer, whichever phrase be preferred, it would not be too late to apply for the licence or consent of the lessor at any time before registration—when the covenant was merely against assignment—and notwithstanding that no consent had been asked for before the execution of the instrument of transfer.⁵⁵ These remarks do not, of course, apply to the case of leases of which merely notice is registered under ss. 50, 51.

In ordinary practice, no doubt, the purchaser will continue to pay over his purchase money in exchange for the executed instrument, etc., and will proceed to stamp the instrument and deliver it at the registry for registration. In cases of some complexity, it can usually be arranged beforehand that all requirements of the registrar shall be complied with, in regard to forms of instruments and proposed entries, etc., so that when delivered for registration no hitch may occur. Occasionally, in large and complicated transactions, the purchaser may have an express stipulation either that the transaction is to be settled at the registry office, or that the purchase money is not to be paid over until the registration is complete. In the absence of express stipulation, it is difficult to say whether a purchaser is in all cases bound to pay over the purchase money upon receiving an executed instrument, and before he can actually be placed on the register. A proper use of the facilities afforded by the system of priority notices may prevent the question from coming up for judicial decision for a long time. It seems clear that a vendor must see that the register is in such a state that a purchaser can at once be registered on delivering at the registry his instrument of transfer duly executed, with land certificate, etc.; but this is not incompatible with its being the proper business of the purchaser to do the actual work of delivering the documents at the registry.⁵⁶ It would seem, however, to lie on the vendor to show that nothing on the register would impede the purchaser's registration, if the matter were doubtful, rather than on the purchaser to show that there was an impediment. There is one argument in favour of the vendor, rather than the purchaser, being responsible for tendering documents, and doing what really amounts to a request that the register be altered; if the Land registry is to be considered as in

⁵⁵ This view has been taken under the Australian system: *Bowen v. Wratten* (1892), 18 V. L. R. 371.

⁵⁶ See the cases under the Australian

system: *Vale v. Blair* (1887), 9 A. L. T. (Victoria) 90; *Common v. Rees* (1891), 9 N. Z. R. 555. These are referred to in Hogg's Aust. Torrens Syst. 900.

principle resembling a stock register, it is certainly the vendor, and not the purchaser, who should take the responsibility of requesting alterations to be made in it, for it is to the vendor—the existing proprietor—that the registrar, as custodian of the register, owes the duty of keeping the register intact.⁵⁷

Upon the registration being completed, the purchaser has the statutory estate of the vendor fully vested in himself. This has been referred to *ante*, p. 185. The only point left to be attended to is the giving any necessary notices to tenants, trustees, mortgagors, etc., according to the nature of the property.

Provision is made by the Acts and Rules for a person, entitled to be, but not yet, registered, transferring or charging the interest in respect of which he is entitled to be registered, so that the person ultimately registered will stand in the shoes of the last proprietor whose name was on the register.⁵⁸

II. Provision is made, in general terms, for the registration of a rent-charge as an “incorporeal hereditament,” and for the registration of a rent reserved as the consideration on sale of land already on the register, and also for “charging” land with an “annuity or other periodical payment.”⁵⁹ No substantial distinction is drawn in the Acts and Rules between a charge creating an annuity, etc., and a charge creating a mortgage; this illustrates what has already been said as to the identity in principle of mortgages and rent-charges under the system (*ante*, p. 102), when created subsequently to registration of the land. Taking the sections, rules, and forms above cited together, the intention seems to be that what is in effect a rent-charge may be created by the registration of an instrument of charge in the prescribed form (Form 45), which is framed on the same lines as other instruments of charge by which mortgages are effected; the difference between a mortgage and a rent-charge created in this way consists in the provision for registering the rent-charge as a separate piece of property—in the language of r. 131, “under a separate title”—in addition to registering it as an incumbrance or charge on the land itself. This incorporeal right is placed on the register as a substantive piece of property, independently of the corporeal property out of which it issues, rather by reason of its permanence, and as a matter of convenience, than because there is any inherent necessity for registering it doubly. A mortgage-charge, not being intended to be permanent, is not registered independently of the land itself; presumably an annuity-charge which was not perpetual would not be registered

⁵⁷ See *Sheffield Corpn. v. Barclay*, [1905] A. C. 392, referred to *ante*, pp. 84, 165.

⁵⁸ 1897, s. 9 (6); 1903, rr. 96, 104, 105.

These are referred to *ante*, pp. 163, 174.

⁵⁹ 1875, ss. 22, 82; 1897, s. 9 (3); 1903, rr. 130, 131, 160, f. 45.

independently, but would be only the subject of a charge certificate, whilst in the case of a perpetual charge it is apparently intended that a certificate analogous to a land certificate should be issued. This difference, however, does not appear to answer to any real difference in principle and juridical theory between these two incorporeal rights. The statutory registered mortgage-charge is a true legal interest in the land, just as a rent-charge under the general law is a legal interest; the statutory registered annuity-charge, although conferring for practical purposes the same rights as are conferred by a legal rent-charge out of unregistered land under the general law, yet in the manner of conferring these rights conforms to the scheme of the new system by casting loose from the technicalities relating to the legal estate, and by becoming in juridical theory what it is actually and in effect under the general law, *i.e.* a charge or incumbrance on, rather than an estate in or ownership of, land.

An annuity-charge may, apparently, be created on leasehold as well as on freehold land, just as under the general law;⁶⁰ a rent-charge granted out of leasehold land is a chattel real, and passes on intestacy as personal property, whilst a perpetual rent-charge out of freehold land is realty, and would on intestacy be held in trust for the heir-at-law. Owing to the difference between a statutory annuity-charge and an ordinary rent-charge, it is perhaps doubtful whether a registered annuity-charge on freehold land would be realty for all purposes; but there seems no reason why a perpetual annuity-charge should not be made to descend for the benefit of the heir in case of intestacy, in the same manner as a rent-charge. The assimilation of these annuity-charges to mortgage-charges suggests that each would be equally personalty—unless, indeed, both were to be considered realty as being legal interests in the land; but a perpetual annuity may be created, which, although personalty, will descend as realty (*ante*, p. 104). Perhaps under rr. 130 and 131, where land is transferred in consideration of a rent, the registrar might approve of a conveyance in the same form as under the general law. Few people, however, deliberately contemplate dying intestate, and since what is in effect a perpetual rent-charge can be created by means of the form prescribed for an annuity-charge, the simplest plan, where land is sold in consideration of a rent, seems to be for the transfer to the purchaser to be made in consideration of the charge to be created, whilst the purchaser creates the charge in favour of the vendor in consideration of the transfer of the land.

By s. 9 (3) of the 1897 Act the provisions of the Acts “with regard to charges” are to apply to annuity-charges, and by sub-s. 2,

⁶⁰ See *In re Fraser*, [1904] 1 Ch. 111, 726.

ss. 19-24 of the Conveyancing Act, 1881, are expressly made applicable to registered charges. It is perhaps doubtful whether, seeing that the latter sections are concerned only with mortgages *eo nomine*, they would apply even in the absence of expressed contrary intention; and possibly in the same way many of the provisions of ss. 23-27 of the 1875 Act would be held not to apply to an annuity-charge. Practically, no difficulty need occur on this point; it is only necessary that the provisions which otherwise might be implied as part of the charge should be excluded by express statement to that effect in the instrument of charge. Thus, it should be stated that the provisions of ss. 19-24 of the Conveyancing Act, 1881, and the right of foreclosure, right of sale, etc., given by the 1875 Act, are excluded. The provisions of s. 44 of the Conveyancing Act, 1881, will make it unnecessary in most cases to add further express stipulations of an affirmative nature. Where the capital value of the land largely exceeds the capital sum which would be sufficient on investment to produce an income equal to the amount of the annual charge, it may sometimes be convenient for the owner of the charge to take a power of sale coupled with power to invest permanently so much of the sale money as will yield the amount of the annual charge.

SUB-SEC. 2.—*Mortgages.*

Effective mortgages of registered land can be created in two ways other than the methods prescribed and contemplated by the Acts and Rules. One plan is for the registered proprietor of the land—the mortgagor—to transfer the land to the mortgagee in consideration of the mortgage money, as on sale, the mortgagor's equity of redemption being secured to him by a deed of defeasance, and this right being protected on the register by a caution. The mortgage stamp duty would have to be adjudicated under s. 12 of the Stamp Act, 1891, and if the instrument of transfer were itself stamped it would show on its face that it had been made by way of security only, and the caution and declaration lodged in support of it¹ will also disclose this. The only advantage of this plan to the mortgagee is that it sets at rest difficulties raised by the vexed question of the legal estate. The disadvantage is that the documents are necessarily longer and more complex, and require more special care and attention in their preparation. From the mortgagor's point of view there are no advantages, and there are many objections; besides the increased expense, he would have great difficulty in raising money on second mortgage, and would necessarily have to give the custody of the land certificate

¹ 1875, s. 53; 1903, r. 226, ff. 15, 58.

to the mortgagee. The balance of advantage to the mortgagee does not seem sufficiently great to justify any preference for this plan, and it is not recommended.

The other plan referred to is for the registered proprietor—the mortgagor—to create a long term of years in favour of the mortgagee, who would then register notice of the lease under ss. 50 and 51. This is not strictly a transaction on the register, for the lease is not actually registered; it is, however, convenient to class it as a transaction on the register for the present purpose. The objections to this plan are: first, the necessity for special care and attention in the preparation of the lease; secondly, the necessity for ascertaining that no other unregistered interest is already in existence to which the lease might possibly be postponed. The mortgagee, in fact, will not get the complete benefit of the mortgagor's warranted title. One advantage of the plan would be the avoidance of the "legal estate" difficulty, for the mortgagee would get as complete an estate as could be conferred off the register, together with powers and the benefit of covenants which would enable him to obtain the registered fee simple for himself or a purchaser. The mortgage deed should contain a power of appointment over the registered fee simple, and a covenant for further assurance referring specially to the freehold reversion.² The mortgagee would also be able, after foreclosure, to enlarge the term into a fee simple under s. 65 of the Conveyancing Act, 1881, and a purchaser of the term would have the same right; the term itself could not be registered as "leasehold land."³ The owner of the new fee simple—whether the mortgagee himself or a purchaser—would, however, be entitled to have the register rectified in his favour. A purchaser taking under the power of appointment would also be entitled to be registered as proprietor in place of the mortgagor.

It is submitted that neither of these plans need be adopted, as a general rule, and that the difficulty as to the legal estate, which at present many practitioners consider to be inseparable from the statutory registered charge, is not nearly so great as it appears to be at first sight.

The scheme of the Acts and Rules provides for mortgages of three kinds: (1) Registered charge; (2) Registered incumbrance; (3) Lien or mortgage by deposit of certificate.

1. The general nature of a registered charge by way of mortgage is discussed *ante*, p. 101. The charge must be over the mortgagor's

² Forms of mortgage of freehold by demise will have to be sought in old editions of precedent books. There is one in 5 Jarm. & By. Conv. (3rd ed. by Sweet), 543; this has no power of appointment.

³ 1875, s. 11 (as amended by 1897, sched. 1). As to enlargement of terms, see Conv. Act, 1881, s. 65; Conv. Act, 1882, s. 11; Wols. Conv. and S. L. Acts (9th ed.), 131.

entire interest, and an assurance to a mortgagee of less than the whole registered estate, as by demise or creation of a term, cannot be registered as a "charge."⁴ The Acts and Rules do not deal separately with charges by way of mortgage—where a principal sum is made repayable with interest—and other charges; charges other than mortgages are most frequently created in connexion with settlements, as for instance where a principal or capital sum only is charged without interest, or where a charge by way of annuity or rent-charge is created. The charges now to be considered are mortgage-charges only; some other charges have already been considered—"rent-charges," etc., *ante*, p. 188—and some will be considered later on under "settlements" in sub-s. 3.

The view here taken is that, a registered charge being as complete and valid an interest in the land as a rent-charge is, no grant of the technical legal estate need be made by the mortgagor to the mortgagee (*ante*, p. 102). A mortgagee would not often be satisfied with a formal security over registered land, if the title were possessory and the legal estate had never been got in by any registered proprietor; in case such a title were accepted, the same considerations would apply as on a purchase with respect to the legal estate (*ante*, p. 182), and the mortgagee would—if the legal estate were to be got in at all—take a conveyance of it by ordinary deed. In cases of registration with possessory title, where the first or some subsequent registered proprietor had got in the legal estate, if covenants for title with respect to the unwarranted period of title are required, they may have to be inserted in the instrument of charge; in cases of registration with absolute title no covenants for title are wanted at all. Exceptional cases of defective title, or of an interest off the register, will be treated—as regards taking a separate assurance—as on a purchase, and need not be further referred to here. Under ordinary circumstances special clauses in a mortgage deed relate, not to matters of title or property, but to powers and rights conferred on the mortgagee; there is no utility in having these in a deed distinct from the statutory instrument of charge, since a copy of the instrument of charge must be prepared, and this is annexed to the charge certificate (r. 259), and accordingly it will not often happen that any other mortgage deed need be prepared in addition to the instrument of charge itself. But it will also very seldom happen that an instrument of charge following exactly the prescribed form (ff. 44-46) will be sufficient; if nothing more were required, some of the stipulations printed with the form will almost certainly have to be inserted.

It will be convenient to state shortly the covenants, powers, and

⁴ See *In re Planet Build. Soc.*, mentioned in Br. & Shel. (2nd ed.), 323.

rights which impliedly arise, by virtue of express enactments in the Land Transfer Acts and Conveyancing Acts, upon the registration of an instrument of charge in Form 44 without any addition, and then to notice various additional clauses which it would usually be found advisable to insert.

The remedies expressly given by the Land Transfer Acts to a mortgagee (including provisions of the Conveyancing Acts expressly incorporated) consist of: (i.) Benefit of covenants by mortgagor; (ii.) Powers of entry; (iii.) Right of foreclosure; (iv.) Power of sale.⁵

i. The only covenants implied on the part of the mortgagor in every registered charge are covenants—"with the registered proprietor for the time being of the charge"—to pay the principal sum charged at the appointed time, and, in the case of interest, at the appointed rate half-yearly on so much of the principal as remains unpaid. S. 23 refers only to cases of a single principal sum, with or without interest, being charged, but s. 9 (3) of the 1897 Act enables an annuity or other periodical payments to be charged, and also enables a charge to be effected in the form of a mortgage to a building society. Any of these implied covenants may be negatived or modified by express declaration in the instrument of charge (r. 159).

Where the land charged is leasehold, there is also implied (s. 24) a covenant by the mortgagor to pay the rent and perform the covenants, etc., reserved and contained in the registered lease, and indemnify the mortgagee in respect of these. This covenant is to the same effect as the latter part of the covenant set out in s. 7 (1) (D) of the Conveyancing Act, 1881, as to be implied "in a conveyance by way of mortgage of leasehold property" on the part of "a person who conveys and is expressed to convey as beneficial owner."

Nothing is said in the 1897 Act as to introducing by implication into registered charges the covenants set out in s. 7 of the Conveyancing Act, 1881, though r. 99 does refer to this. Where any of these covenants are required they should, as a matter of precaution, be expressly introduced; until it is judicially decided that a statutory charge is a "conveyance by way of mortgage," it would not be safe to rely on the effect of the words "as beneficial owner."

The question may be raised whether the mortgagor's covenants for payment are put an end to by foreclosure, sale of the property, or removal of the charge from the register.⁶

Foreclosure itself does not appear to affect the remedy by action

⁵ 1875, ss. 23-27; 1897, s. 9 (2, 3);
Conv. Act, 1881, ss. 19-24 (omitting sub-ss.
1 and 4 of s. 21).

⁶ See Br. & Shel. (2nd ed.), addenda to
pp. 171, 595.

on the covenant, subject to any equitable grounds for restraining such an action; but the foreclosure would (as will be pointed out subsequently) be re-opened if the property were still vested in the mortgagee. So a sale of the mortgaged property does not in itself appear to prevent the mortgagee from suing on the covenant. The difference between statutory mortgages over registered land and ordinary mortgages over unregistered land furnishes some argument against these views. It appears at first sight to be incompatible with the principles of the system that absolute ownership should co-exist with a charge on the land; in other words, the charge might be thought to be extinguished or merged in the ownership. But there seems no reason why the ordinary law relating to merger of charges should not apply, so as to keep the charge alive for the benefit of the owner of the property,⁷ if there is no positive enactment in the Acts or Rules to prevent this. It seems clear that, at any rate with respect to foreclosure, there is nothing to prevent the new owner continuing to be registered as proprietor of the charge as well as the land.

Where sale has been effected, and the purchaser is necessarily registered as proprietor of the land free of the charge, the registration of the charge must—as regards the land—come to an end; the interest represented by the registered charge must therefore, if it is to continue, be an interest which is no longer on the register, for the register is a register of land and charges upon it, not of personal rights—in gross, as it were. But there seems no reason why the instrument of charge should not continue to be construed as a covenant for payment of certain moneys; there is not much difficulty in so construing it, even if no formal words of covenant could be held to be any longer implied. But it is submitted that the intention of the parties in executing the instrument should be considered, and that the formal covenants implied by s. 24 should still be taken to be embodied in it. The precaution should, of course, be taken by the mortgagee when delivering the certificate of charge to the registry office, for cancellation as regards the purchased land, to endorse on it a statement that it is not intended that the charge shall cease to operate as a covenant. It seems to have been thought, under the Land Registry Act, 1862, that removal from the register of a second mortgage, on sale by the first mortgagee and at the request of the purchaser from him, does not affect the rights of the second mortgagee against the mortgagor;⁸ the principle of keeping alive the covenants in a registered charge,

⁷ See *Ingle v. Jenkins*, [1900] 2 Ch. 368; *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631.

⁸ *In re Richardson* (1871), L. R. 12 Eq. 398, 13 Eq. 142.

after cancellation quâ charge on the land, seems to be precisely analogous.⁹

The same principle—of keeping the covenants for payment in existence—would apply where the registered charge was partly discharged, but the land itself wholly released from the charge; the mortgagee would still be at liberty to sue, for the residue of the mortgage debt, on the mortgagor's covenants expressed or implied in the instrument of charge.¹⁰

ii. By s. 25 the mortgagee under a registered charge has conferred upon him the power of entering into possession of the mortgaged property—"for the purpose of obtaining satisfaction of any moneys due to him under the charge, at any time during the continuance of the charge." This short section is the only provision upon the subject. The right of the mortgagee to enter into possession under it is clear, and the result appears to be that he will have the rights, and be under the liabilities, which a mortgagee in possession would have to be under with regard to unregistered land vested in him by an ordinary mortgage in fee, or by assignment in the case of leasehold. Thus, the provisions of the following sections of the Conveyancing Act, 1881, would apply to the mortgagee: s. 10, relating to the mortgagee's rights as reversioner with regard to leases made by the mortgagor; s. 15, providing that a mortgagee in possession cannot be called upon to transfer the security upon redemption; s. 18, giving the mortgagee leasing powers; s. 19—expressly made applicable to registered charges by s. 9 (2) of the 1897 Act, giving the mortgagee power to cut and sell timber; s. 44, conferring special powers for recovery of annual payments charged on the land.

The powers thus conferred on mortgagees in possession by the Conveyancing Act, 1881, do not, even in the case of unregistered land, depend on the legal estate being vested in the mortgagee; any doubt as to whether they apply to mortgages effected by registered charge under the Land Transfer Acts seems to be set at rest by the definition of "mortgage" and "mortgagee in possession" in s. 2 of the Conveyancing Act, 1881, where "mortgage includes any charge on any property for securing money," and a "mortgagee in possession" is "a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property." The right of the mortgagee under a registered charge

⁹ Under the Australian system it has been held that a mortgagee can sue on the mortgagor's covenant for payment, after the property, or part of it, has been sold and transferred and the purchaser registered, or a discharge of the mortgage has been registered: *Trust and Agency*

Co. v. Markwell (1874), 4 Q. S. C. R. 50; *Bell v. Rowe* (1901), 26 V. L. R. 511.

¹⁰ 1875, s. 28 (as amended by 1897, sched. 1); 1903, r. 166, f. 48. It has been so held under the Australian system: *Bell v. Rowe*, *supra*.

to recover possession of the mortgaged property under the combined powers conferred by s. 25 and the above-mentioned sections of the Conveyancing Act, 1881, seems clear.

It also seems clear that, even apart from the provisions of the Conveyancing Act, and by virtue of s. 25 only, he would have the right to recover possession; as for instance, if a lease were in existence which had been created before 1882, so that s. 10 of the Conveyancing Act, 1881, would not apply.¹¹ The Conveyancing Act would also have no application if it were necessary to bring an action against an intruder for recovery of the land.

The chief point to be established, in order to show that the proprietor of a registered mortgage-charge has ipso facto a right to bring a possessory action in respect of the land, is that he need not have the technical "legal estate." Where the land is unregistered it is sufficient, in order to maintain an action for recovery of land, that the plaintiff should show in himself a complete right to possession.¹² The interest of a mortgagee, or registered proprietor of a registered charge, may be compared to the chattel interest, or term of indefinite duration, which was sometimes held to be vested in trustees by will prior to the Wills Act, 1837; ¹³ such an estate carried with it the right to possession of the land. So the mortgagee of registered land has the right to possession, and this right appears to be all that is required in order to enable him to succeed in an action for recovery of the land. The mortgagor, or registered proprietor of the land, who may in some sense be said to occupy a position analogous to that of having the legal estate, cannot dispute the mortgagee's right to possession, and there appears to be no one else who could do so; any claimant adverse to the registered estate in the land, or the registered charge itself, would have to get the register rectified before he could be heard to claim possession—always bearing in mind the excepted interests enumerated in s. 18 of the 1875 Act.

If the proprietor of a registered charge can be regarded as taking a chattel interest—a term for an indefinite period—his right to take advantage of the covenants and conditions in the lease can be supported on more technical grounds. A grantee of part of the reversion—as

¹¹ As a matter of practical precaution, and pending the settlement of the question by judicial decision, it is advisable to insert in the instrument of charge a special assignment of the benefit of the rent, lessee's covenants, and conditions in a lease created before 1882, where the freehold is the subject of a registered charge. The difficulty caused by *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631, is referred to a little further on.

¹² *General Finance Co. v. Liberator Build. Society* (1878), 10 Ch. D. at 24; *Allen v. Woods* (1893), 4 Reports 249, 68

L. T. 143; *Antrim Land Co. v. Stewart*, [1904] 2 I. R. 357, 373; *Matthews v. Usher*, [1900] 2 Q. B. 535; *Ocean Accident Corporation v. Ilford Gas Co.*, [1905] 2 K. B. 493, where the plaintiff corporation was equitable mortgagee with the right to take possession at any time.

¹³ *Hitchens v. Hitchens* (1700), 2 Vern. 402; *Carter v. Barnadiston* (1718), 1 P. W. 505, 518. A term may be created by any words showing an intention to confer the possession: *In re Beachey*, [1904] 1 Ch. 67, 75.

for a term of years—in the whole of the premises is an assignee of the reversion, as regards both covenants and conditions, within the 32 Hen. 8, c. 34;¹⁴ and the law of copyholds affords an illustration of the rights of a reversioner being transferred by an assurance which is not an assignment as ordinarily understood.¹⁵ That the benefit of covenants and conditions should pass to and become vested in a particular class of assigns, or persons who are given an interest in the land, on the footing of the covenants or conditions being annexed to the land and intended to pass together with the interest in it given by the owner—this being a question of intention—seems to be in accord with the modern principles governing the assignment of covenants annexed to the land.¹⁶

Some difficulty is caused, with respect to the right of a registered proprietor of a mortgage-charge to take advantage of the lessee's covenants and conditions in a lease created before 1882, by the case of *Capital and Counties Bank v. Rhodes*.¹⁷ It was there held—though this was a subordinate point, not necessary for the decision of the principal point relating to the question of merger, nor really raised for decision by the facts—that the registered proprietors of a mortgage-charge would not have been entitled to re-enter for breach of covenant, as reversioners under the condition of re-entry in a lease made in 1871, if they had not had vested in themselves the technical legal fee simple, though the charge was made by the registered proprietor of the land who was the reversioner of the lease. The statutory charge did contain a grant of the fee simple to the mortgagees, and this was held to vest the fee simple in them, so that the question of the right of a mortgagee by registered charge only to take advantage of a condition of re-entry in his mortgagor's lease, created before the land was registered, could not be actually decided in this case. In addition to these considerations, it should be noticed that the value of the dicta in the judgments is lessened by the very evident fact that the members of the Court were not familiar with either the principles of the system contained in the Acts and Rules or its practical working; two important features of the system were not referred to, *i.e.* the enactments which expressly vest an estate in fee simple—or for years, as the case may be—in the registered proprietor of land, and the enactment which enables a purchaser to insist (notwithstanding any stipulation to the contrary) on a vendor of registered land at his own expense placing the purchaser in a position to be registered.¹⁸ Under all these circumstances it is submitted

¹⁴ *Rogers v. Humphreys* (1835), 4 A. & E. 299, 43 R. R. 340; *Wright v. Burroughes* (1846), 3 C. B. 685, 71 R. R. 459.

¹⁵ *Whitton v. Peacock* (1834), 3 M. & K. 325, 41 R. R. 79.

¹⁶ See *Rogers v. Hosegood*, [1900] 2 Ch.

388.

¹⁷ [1903] 1 Ch. 631; see especially at pp. 647, 649, 654.

¹⁸ 1875, ss. 7–9, 13; 1897, s. 16 (2); 1903, rr. 55–59.

that the necessity for a proprietor of a registered charge to take a formal grant—off the register—of the mortgagor's legal reversion, in order to enable the mortgagee to take advantage of the covenants and conditions in the mortgagor's lease, or to maintain an action for recovery of the land, is a question which remains open for decision; it is also submitted that no such grant is necessary.

iii. By s. 26, the mortgagee may obtain foreclosure as though "the land had been transferred to him by way of mortgage subject to a proviso for redemption;" by r. 164, the mortgagee, on obtaining an order absolute for foreclosure, may be registered as proprietor of the land, subject of course to charges or incumbrances prior to his own security. The expression "equity of redemption" seems to occur only in r. 164 and in r. 22 of the Fee Order, 1903; "land subject to a charge," etc., is the usual expression in the Acts and Rules. Since the mortgagor's estate in the land is not vested in the mortgagee, the word "redemption" is, strictly, inaccurate; and, of course, precisely the same technical inaccuracy is involved in the use of the word "foreclosure." "Redemption" of land from a registered charge means, and is effected by, having the cessation of the charge entered on the register;¹⁹ "foreclosure" means the transference of the mortgagor's ownership or estate in the land to the mortgagee.

The provisions of the Conveyancing Acts relating to a mortgagor's right to redeem appear to apply to mortgage-charges. Thus, by s. 15 of the Conveyancing Act, 1881, and s. 12 of the Conveyancing Act 1882, a mortgagor and his puisne incumbrancers may require a transfer of the security in lieu of a reconveyance of the property, except where the mortgagee has taken possession; notwithstanding the difference between an ordinary mortgage and a statutory charge, there is no practical difficulty in applying an analogous rule to the case of statutory charges, and there seems no reason on principle why this should not be done. The rule, as applied to registered land and mortgage-charges, would then be to the effect that a registered proprietor of land subject to a mortgage-charge, who is entitled to redeem, and also the registered proprietors of subsequent mortgage-charges, can require the registered proprietor of a charge, or a charge prior to their own, to transfer the charge in lieu of signing an instrument of discharge in the prescribed form.²⁰ That another provision of the Conveyancing Act, 1881, relating to consolidation of mortgages (s. 17), applies to registered mortgage-charges, is implied by a rule being made on the same subject (r. 169). This rule, however, further restricts the operation of the doctrine of consolidation, in accordance

¹⁹ 1875, s. 28 (amended by 1897, sched. 1); 1903, rr. 166, 167, f. 48.

²⁰ 1903, ff. 48, 49.

with the general principles of the Land Transfer Acts and the enactment in s. 9 (4) of the 1897 Act, by providing in effect that no other land, than that directly affected by the mortgage-charge containing the stipulation for consolidation, is to be affected by the stipulation unless another specified charge is expressly mentioned as to be consolidated; in that case the relative land certificates must be produced, and the stipulation for consolidation will be registered against every piece of land affected.

The ordinary rules and practice with respect to the mortgagor's right to redeem will presumably apply as far as possible to registered charges, notwithstanding that the security is effected by a charge with statutory powers and not by transfer of the mortgagor's estate; thus the ordinary rule as to six months' notice requiring payment, or of intention to redeem, will continue to apply to registered charges.²¹

Under the general law an order absolute for foreclosure frees the property vested in the mortgagee—in the case of a legal mortgage—from the right of the mortgagor to redeem it, and if the legal estate is not in the mortgagee, an order to convey or a vesting order is also made; the foreclosure may, however, under certain circumstances be re-opened.²² Neither of these two propositions applies exactly to foreclosure of a registered charge. Although the mortgagor's estate is not vested in the mortgagee, no vesting or other order is required to supplement the order for foreclosing the right to redeem; the property is vested in the mortgagee by the registration of the latter as proprietor upon producing the order at the registry (r. 164).

It appears to be quite incompatible with the provisions of the system for warranty of title that the general rule should prevail to its full extent as to foreclosure being re-opened. As between the parties themselves, there seems no reason why the ordinary rule should not prevail; the foreclosure might well be re-opened either by the act of the mortgagee—as, for instance, if he sued on the covenant for payment,²³ or on some special grounds put forward by the mortgagor. But the rights of a duly registered purchaser of the land from the mortgagee would seem to put an end to any right of the mortgagor to have the foreclosure re-opened. With respect to the registration of the mortgagee himself, it is not expressly stated in the Acts or Rules whether he acquires a title as a transferee

²¹ This is so under the Australian system: *Cape v. Savings Bank* (1893), 14 N. S. W. Eq. 33, 204.

²² See Fisher, *Mortgages* (5th ed.), 476, 925, *et seq.*

²³ See Fisher, *Mortgages* (5th ed.), 930. Even under the Australian system, which does not usually permit of a foreclosure being re-opened for other reasons than fraud, it was held that the act of

the mortgagee in suing on the mortgagor's covenants for payment would re-open a foreclosure of registered land: *In re Premier Permanent Assoc.* (1899), 25 V. L. R. 77. This right of action by a mortgagee, and of redemption by a mortgagor, after foreclosure, have now been abrogated by statute in Victoria: *Conveyancing Act, 1904* (No. 1953), ss. 31, 36.

for valuable consideration, or as a transferee without valuable consideration.²⁴

By s. 26, however, the mortgagee is entitled to foreclosure as "if the land had been *transferred* to him by way of mortgage;" this seems to support the view already stated (*ante*, p. 115), that a registered charge is to be regarded for some purposes as a transfer of the land *pro tanto*, in which case the registration of the mortgagee as owner of the land in lieu of the charge does not involve the necessity of any fresh valuable consideration being given to support his rights, but is merely the completion of the statutory rights acquired when he first became registered proprietor of the charge. On this view the mortgagee, when registered as proprietor of the land, will be in the same position as if he were a transferee for valuable consideration under s. 30, etc., subject only, as between himself and the mortgagor, to the register being rectified in the event of the foreclosure being re-opened and the land redeemed; the new proprietor will, of course, be subject to the same rights and liabilities as the mortgagor was subject to, in the event of the land being registered with less than absolute title.

iv. By s. 26 the mortgagee is entitled to "enforce" a "sale of the land" as an alternative to foreclosure; this contemplates the instrument of charge containing no power of sale. By s. 22 a power of sale may be included in the instrument of charge, and is then to be entered on the register. But by s. 9 (2) of the 1897 Act the provisions of the Conveyancing Act, 1881, conferring powers on mortgagees (ss. 19-24, omitting two sub-sections), are made applicable to registered charges; the power of sale given by the Conveyancing Act is therefore implied in every registered charge unless expressly excluded, and apparently need not be entered on the register. By s. 27 of the 1875 Act the mortgagee "with a power of sale" may sell and transfer the land "as if he were the registered proprietor of such land." The purchaser from the mortgagee will, on registration, get a title warranted under s. 30 or corresponding sections, according to the state of the title. With respect to the protection afforded by s. 21 (2) of the Conveyancing Act, 1881, to a purchaser from a mortgagee under his power of sale, it is submitted that the registration of the purchaser, and not the execution of the instrument of transfer, is the point of time, with respect to registered land, answering to execution of the conveyance in the case of unregistered land; a purchaser would thus, until actually registered, be amenable to any notice which would, in the case of unregistered land, be sufficient before completion of conveyance to make him a *malâ fide* purchaser.²⁵

²⁴ 1875, ss. 30-32, 35; 1903, rr. 140-142. With these compare 1875, ss. 33, 38.

²⁵ See *Life Interest Corporation v.*

Hand in Hand Society, [1898] 2 Ch. 230; *Gibbs v. Messer*, [1891] A. C. at 254.

The question whether the exercise of the power of sale puts an end to the mortgagor's covenant for payment, or not, is referred to *ante*, p. 194.

The following are some instances of circumstances which require the insertion of special clauses in the instrument of charge: (i.) The land is registered with possessory title; (ii.) The land is subject to long leases; (iii.) The land is leasehold; (iv.) The land has substantial buildings erected on it; (v.) The mortgagees are trustees; (vi.) The mortgagors are trustees.

i. As already pointed out (*ante*, p. 193), if the land is registered with possessory title, and it be desired to have covenants for title from the mortgagor in respect of the unwarranted title, it will be necessary to insert these in extenso in the instrument of charge.

ii. The question of properly securing the mortgagee where the land is subject to long leases has been referred to *ante*, p. 120. Whether the lease were created before the land was registered, or after first registration, the mortgagee should—though possibly it may be decided not to be necessary—take a special assignment of the benefit of the rent, lessee's covenants, and conditions in the lease, coupled with a power of attorney enabling him to sue and take full advantage of the covenants entered into with the mortgagor.

iii. If the land is leasehold the mortgagee should also take a special assignment of the benefit of the lessor's covenants. Even if he did not do so, he would be able to sue the lessor, on the latter's covenants running with the land, by making the lessee (the mortgagor) a party; the mortgagor, having charged all his interest in the property in favour of the mortgagee, could not defeat the latter's equitable right to the benefit of the lessor's covenants.²⁶

iv. If the security consists partly of substantial buildings, a covenant by the mortgagor to insure against fire should be inserted; no such covenant is implied by the Land Transfer Acts, and s. 19 of the Conveyancing Act, 1881 (incorporated in the Land Transfer Acts by s. 9 (2) of the 1897 Act), only confers power on the mortgagee to insure.

v. Where the mortgage money is advanced by trustees, it should be expressed to be paid by them out of moneys belonging to them on a joint account, according to the ordinary practice with respect to mortgages of unregistered land. If this is done, no question will arise as to any entry being made on the register restricting dealings with the property by the survivor on the death of one of the mortgagees.²⁷ Whether payment to one only of the

²⁶ This is illustrated by a case under the Australian system: *Deal v. Dunbar* (1888), 6 N. Z. R. 636, 7 N. Z. R. 8.

²⁷ See 1875, s. 83 (3) (as amended); rr. 163, 224, 225.

joint creditors will operate as a sufficient discharge to the mortgagor seems to depend on the nature of the proceedings in which such a payment is alleged to be insufficient;²⁸ since "foreclosure" and "redemption" have not, with respect to mortgage-charges on registered land, the same meaning as with respect to ordinary mortgages over unregistered land, it may be that the reasoning on which the judgment in *Powell v. Brodhurst* was based would not apply altogether to these statutory charges; under the Acts the mortgagor's right is a statutory right to have the charge cancelled on payment of the debt, not a right by favour of the Court in derogation of the mortgagee's legal rights, so that possibly any payment which would be at common law a good payment of the debt—as to one joint creditor—might be held sufficient for all purposes against the mortgagees.²⁹

vi. In the event of trustees creating a mortgage-charge, it is important that their personal liability under the covenants for payment, or for indemnity in the case of leasehold land, implied by ss. 23, 24, should be expressly negatived in the instrument of charge; this will be in itself, when the instrument of charge is registered, a sufficient entry on the register.³⁰

If the land mortgaged is settled land, it will be the duty of the registered proprietor who creates the charge to state in, or note on, the instrument of charge the existence of any prior term or power for raising money which has not yet come into operation.³¹

The completion of the mortgage transaction will only differ from the completion of a purchase transaction as an ordinary mortgage differs from an ordinary purchase. With respect to the execution and authenticity of the instrument of charge itself, the mortgagee is, of course, master of the situation, and can insist on the mortgagor coming to the mortgagee and executing in the latter's presence. The provisions relating to transfer of land before the transferor is himself registered apply *mutatis mutandis* to a charge being made before the mortgagor is himself registered;³² these provisions will, in fact, be made use of in the completion of a purchase and mortgage simultaneously more frequently than in the completion of two purchases. In the view which is here taken of the relation between the registered estate and the legal estate, the difficulty of

²⁸ See *Matson v. Dennis* (1864), 4 D. J. & S. 345; *Steeds v. Steeds* (1889), 22 Q. B. D. 537; *Powell v. Brodhurst*, [1901] 2 Ch. 160, 167.

²⁹ See, under the Australian system, *Bell v. Rowe* (1901), 26 V. L. R. 511. In this case, which was decided in accordance with, and on the authority of, *Steeds v. Steeds*, *supra*, the action was brought by the mortgagees, as in *Powell v. Brodhurst*,

supra, but it was not necessary for the defendant to counterclaim for redemption, so that the point decided in *Powell v. Brodhurst* did not arise; the mortgagees sued on the covenant for payment after a discharge of the mortgage had been entered on the register.

³⁰ 1875, ss. 23, 24; 1903, r. 159, f. 44 A.

³¹ 1897, s. 6 (7); 1903, r. 171.

³² 1897, s. 9 (6); 1903, rr. 96, 104, 105.

completing a purchase and mortgage simultaneously on the occasion of first registration of the land will not arise with respect to purchase and mortgage of land already on the register.

If the mortgagor is a company registered under the Companies Acts, 1862-1900, it will be necessary to produce to the registrar evidence that the mortgage-charge has been registered at the office of the company, or that it is not created for the purpose of securing debentures.⁸³

The following matters will now be referred to: (i.) Second and subsequent mortgage-charges; (ii.) Transfer of charge, and sub-charge; (iii.) Discharge of mortgage-charge.

i. Second and subsequent charges will be in the same form as first registered charges. If the land certificate is in the custody of the first mortgagee, the request to him to produce it at the registry office, for the purpose of having the puisne charge noted upon it, will almost necessarily constitute a notice to him of the subsequent charge. If the mortgagor has the land certificate in his own possession, the concurrence of the first mortgagee will not be necessary; notice of every subsequent charge should be given to each prior mortgagee. Registered charges take priority according to the order of their registration, and not according to the "order in which they are created" (s. 28)—"created" here evidently meaning "executed." This provision seems to prevent the application of the doctrine of tacking to registered charges under ordinary circumstances,⁸⁴ since each charge is subject only to the charges registered in priority to it. But in the event of a prior charge being one to secure further advances up to a named amount, and of the mortgagee making further advances without notice of a mesne charge being registered, it seems probable that the amount of the further advance could be—in effect if not in name—tacked to the original charge, and so gain priority over the second charge. The express terms of the instrument of charge as to the security covering further advances seem to amount to an "entry to the contrary on the register" within the meaning of s. 28, and so to secure for the charge priority—to the amount of the agreed advances—over any charge registered subsequently but before the full amount of advances had been made. If the doctrine of notice is to be applied, it seems probable that registration of a second mortgage is not in itself notice to the first mortgagee; registration answers rather, in its effect, to getting in the legal estate under the general law, than to fixing persons interested in the property with notice.⁸⁵

⁸³ 1903, r. 161; see Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.

⁸⁴ Possibly tacking may be considered to be altogether abrogated with respect to

registered land, since it depends on the possession of the technical legal estate: see *Powell v. Brodhurst*, [1901] 2 Ch. 160, 167.

⁸⁵ Even under the Australian system

One result of the difference between the statutory mortgage-charge and an ordinary legal mortgage is that a second charge would, on the first charge being removed from the register, itself become a first charge without the necessity of any transfer of the prior security.

ii. There is little difference in form and effect between transfer of a registered charge, and transfer of land; the transferee becomes the registered proprietor of the charge, with the benefit of the mortgagor's covenants for payment, and other remedies for enforcing the security.³⁶

A registered charge may also be mortgaged by means of a sub-charge.³⁷

iii. A registered charge ceases to affect the land on an entry being made in the register to the effect that it has ceased; although a form of instrument of discharge to be signed by the mortgagee is prescribed, the registrar may act on other evidence of the satisfaction of the charge, so that a mere receipt for the amount of the principal would be sufficient; the prescribed form of discharge is specially made applicable to discharge of building society mortgages, and is equivalent in effect to the statutory receipt which, under the Building Society Acts, would have to be endorsed on the original mortgage.³⁸ This places a discharge of a registered charge very much on the footing of discharge of an equitable mortgage, and it is on this footing that the Inland Revenue Commissioners at present regard such a discharge as dutiable—*i.e.* liable only to duty as a receipt.³⁹ Transfer of land and its release from an existing charge may be effected by one instrument.⁴⁰

The entry on the register of the cessation of the charge does not seem *ipso facto* to put an end to the covenant for payment, if the debt is not in fact completely paid (*ante*, p. 194). The question of payment to joint mortgagees is referred to *ante*, p. 202. Since the entry of the cessation of the charge is substantially a matter of evidence as to the money due upon it having been paid to the persons entitled to receive it, a formal receipt signed by the representatives of a deceased mortgagee might well be accepted by the registrar as sufficient, without the representatives being registered

registration is not equivalent to notice for all purposes; a mortgagor is not fixed with notice of a transfer of the mortgage merely by the registration of the transfer: *Nico v. Bell* (1901), 27 V. L. R. 82.

³⁶ 1875, ss. 23–27, 40; 1903, r. 168, f. 49.

³⁷ 1897, s. 22 (6) (e); 1903, rr. 178–181.

³⁸ 1875, s. 28; 1903, rr. 166, 167, f. 48. R. 167 (Building Societies' Mortgages) was apparently thought to be necessary by reason of the special provisions relating to these mortgages (1897, s. 9 (3); 1903,

rr. 121, 122); but if the original mortgage or charge is in the custody of the building society, the society's own statutory form of receipt could be used.

³⁹ See *Firth v. Inland Revenue*, [1904] 2 K. B. 205, which in practice governs the case of a statutory discharge in the prescribed form; Br. & Shel. (2nd ed.), 224 (as altered by the addendum), 561. This view seems open to question.

⁴⁰ 1903, r. 182, f. 50.

as proprietors of the charge. But it would seem that the mortgagor could not be compelled to pay the amount due under the charge on any one but the person registered as proprietor of the charge.⁴¹

2. "Incumbrance" is used in the Acts and Rules in a wide and in a narrow sense; in the narrow sense it means simply a mortgage or charge for securing payment of money, created before the land was placed on the register. Under the authority of the 1897 Act, rules have been made enabling the owner of such an incumbrance to be registered as proprietor of it, and assimilating the proprietor's rights as far as possible to the rights of a proprietor of a registered statutory charge.⁴² Although in most instances of incumbrances outstanding at the time of first registration, the legal estate would be in the incumbrancer, it is significant that no mention is made of the legal estate, and that no reconveyance is required on the "cessation" of the incumbrance; this is in accordance with the general scheme of the system—to abrogate the technical legal estate as an estate or ownership, and only recognize it in some instances as conferring rights of property less than actual ownership of the land.

3. The general nature of the interest created by deposit of a certificate has been referred to *ante*, p. 132. The lien can be created over freehold land, leasehold land, or a charge;⁴³ "land" would apparently include a rent-charge, or special class of land, registered independently of the land to which it related, and "charge" would apparently include both mortgage-charge and annuity-charge, unless the reference to "mortgage deed" in s. 8 (6) of the 1897 Act be thought to be against this, which does not seem likely. By s. 8 (6) the lien is subject to "registered estates, charges, or rights," which seems to mean estates, etc., in existence at the time of the creation of the lien; by r. 251 the lien is also subject to "unregistered estates, rights, or interests protected by caution or other entry on the register at the time of the creation of the lien." By the same rule the lien is also subject to estates, etc., excepted from the registration, but only—so far as the words of the rule go—"in the case of good leasehold, qualified, or possessory title;" to these must evidently be added those rights to which, under s. 18, all land—even when registration is with absolute title—is subject.

Notice of "intended deposit" may be given by any person who is not yet registered as proprietor, whether on a proposed first registration, or on a proposed transfer from an existing proprietor. Apparently, when an existing proprietor desires to create a lien,

⁴¹ See a case on appeal from Victoria: *Payne v. Rez*, [1902] A. C. at 560, reported below as *Payne v. Reg.* (1901), 26 V. L. R. 705 (see especially at p. 752).

⁴² 1875, s. 19; 1897, s. 22 (6) (c); 1903, rr. 175-181, 216, 217.

⁴³ 1897, ss. 8 (6), 22 (6) (f); 1903, rr. 243-251.

here notice of "intended deposit," but the
ly made in order to create the lien. The
stated (*ante*, p. 132) that this lien is in the
gal interest, as distinguished from a merely
one which is practically only defeasible by the
duly induced to register a transaction without
uction of the existing certificate. Against such
itor may protect himself by having notice of the
d (rr. 243, 249).

Two practical precautions should be observed by persons pro-
posing to advance money on the security of a mortgage by deposit
of certificate. In the first place, it should be ascertained by search
that the entries on the certificate represent accurately the entries
on the register up to date of search, and any entries on the register
and not on the certificate should be inquired into. In the next
place, where the title is less than absolute the title deeds relating
to the unwarranted title should if possible be deposited with the
certificate, or their whereabouts inquired into; the case of good
leasehold title will usually, of course, be exceptional in this respect,
and will be treated for the time being as absolute.

The most important practical question with respect to mortgages
by deposit is: How far is the mortgagee, when he has once ascer-
tained that there is nothing on the register to prevent the mortgagor
from depositing his certificate, protected in making successive
advances? In a concrete shape the question will usually be: Is
a banker safe in regarding the mortgage as security for a current
account? The general rule is that a mortgagee cannot gain priority
for a prior advance after receiving notice of a second mortgage, or
a security given by the mortgagor to another person subsequently
to the first mortgagee's advances already made; and the rule is
the same even if the first mortgagee have covenanted to make
further advances,⁴⁴ though apparently it would be different if the
mortgagor had expressly or impliedly agreed to take further
advances from the mortgagee.⁴⁵ In the present case registered
dispositions are *ex hypothesi* excluded; the banker has possession
of the certificate, and may eliminate the risk of a fraudulent
registration by giving notice of the deposit. The question is really
reduced to this: Will the mere entry of a caution, restriction, in-
hibition, or notice on the register by another person operate, without
more—i.e. without notice to the banker, to deprive him of priority
in respect of any advance made to the mortgagor subsequently to

⁴⁴ *Hopkinson v. Rolt* (1861), 9 H. L. C. 514; *West v. Williams*, [1899] 1 Ch. 132.

⁴⁵ See *Johnson v. Bourne* (1843), 2 Y. & C. C. 268, 60 R. R. 142, referred to

in the dissenting speech of Lord Cranworth in *Hopkinson v. Rolt*, *supra*; *Bradford Banking Co. v. Briggs* (1886), 12 A. C. at 36; *West v. Williams*, *supra*, at 140.

the entry of the caution, etc.? It is submitted that the answer should be in the negative, and that the entry of a caution, etc., on the register is not in itself notice to the holder of the certificate; à fortiori, the transaction in respect of which the restrictive entry is made is not, without notice to the banker, competent to gain for the person in whose favour it is made any priority as against the banker. The interest of the depositor, being a true legal interest, of the same nature as, though not identical with, a registered interest, appears to be superior in validity to any unregistered though protected interest—which is much in the position of a defeasible equitable interest under the general law. Nothing short of notice of the equitable rights of another person would avail to deprive the depositor of the full efficacy of his statutory interest. The result, then, would appear to be that a banker, having once ascertained that the customer is entitled—so far as appears by the register—to give a mortgage by deposit, is entitled, so long as he keeps possession of the certificate and receives no notice of conflicting interests, to rely on his lien covering all advances made to the customer on current account.

The ease with which an effectual mortgage by deposit may be made will render it particularly advisable for beneficiaries to enter a caution, etc., in any case in which land or a charge is vested in a sole trustee. The risk to which beneficiaries are exposed by registered land or charges being vested in a sole trustee is, however, not greater than the risk where the trust property consists of stock or shares, the legal title in which is readily transferable. In the case of a sole proprietor of land being tenant for life under a settlement, there will almost certainly be restrictive entries on the register which will give sufficient notice to any proposing depositor; if there are no restrictive entries showing the land to be settled land, the other beneficiaries must, for their own protection, make some entry on the register as in the case of an ordinary sole trustee.

SUB-SEC. 3.—*Settlements and Voluntary Assurances.*

Taking “settlements and voluntary assurances,” as forming one class of transactions, they may be divided into: (I.) Settlements on marriage; (II.) Settlements created by will; (III.) Voluntary settlements and other voluntary assurances.

I. Settlements made on marriage form the largest and most important division, with respect to the differences in the methods of carrying out the transaction which are necessitated by the land being registered.

The word “settlement” does not occur in the 1875 Act; in s. 6

of the 1897 Act, and in the 1903 Rules, it has the same meaning as in the Settled Land Acts,¹ *i.e.* in effect, an instrument or instruments by which a succession of interests in land, or money to arise from its sale, is created. Like "conveyance," the word "settlement" may be used to denote the instrument or the transaction, and in the present sub-section it will generally mean an entire transaction of vesting land in fiduciary proprietors, or creating a succession of beneficial interests; when used, as it must sometimes be used, to denote an instrument, it will mean an unregistered non-statutory instrument, and not a statutory instrument of transfer. There cannot, in fact, be such a thing as a registered instrument of settlement; this is not permitted by the scheme of the system, which aims at effecting the results intended to be effected by a settlement transaction through methods different from those of the general law. Settlements are here included amongst transactions on the register for the sake of convenience; it would possibly be equally convenient, but not more correct, to class them with transactions off the register. The scheme of the system only allows so much of a settlement transaction to appear fully on the register, and be a registered transaction, as is contained in a statutory instrument of transfer made in favour of the registered proprietors who are intended to hold the land as fiduciary proprietors or trustees; the residue of the transaction, and instrument defining the interests of the beneficiaries, are merely permitted to be recognized as existing by entries on the register, without sharing in the benefits of registration with respect to warranty of title, etc.² An essential part of this scheme is that the land is completely vested in a fiduciary proprietor or proprietors; no provision exists for enabling a tenant for life, or other partial or limited owner under a settlement, to be registered as proprietor of the estate to which he is entitled beneficially, the registered estate consisting of the fee simple, or of the whole term comprised in a lease. It is merely stating the same thing in another way to say that a settlement of registered land cannot be effected—so as to appear on the register—without the land being vested in a person or persons who is or are in fact a trustee or trustees, though not necessarily so *eo nomine*.

S. 83 of the 1875 Act has been amended, but the scheme of the Acts still is that references to the particulars of interests in land held upon trust should be, as far as possible, excluded from the register;³ this does not, any more than in the case of a share

¹ 1897, s. 6 (10); 1903, r. 1. The most important sections of the Settled Land Act, 1882, defining settlements are ss. 2 and 63; see also ss. 6, 7 and 8 of the Settled Land Act, 1884.

² 1875, ss. 68, 83 (1, 3) (as amended); 1897, s. 6 (2, 3, 6); 1903, rr. 128, 129, ff. 22-27.

³ See preceding note.

register, mean that the registered proprietor is to hold free from any trust which may be in existence,⁴ and express provision is made for the protection of all existing trusts and unregistered interests, when necessary.

The possibility of land being vested in co-proprietors who are actually trustees is fully recognized by the 1875 Act, as much as in the case of the Companies Act, 1862, and a settlement which should, as in the case of a settlement of stocks or shares, leave the land vested in the trustees as co-proprietors in trust for sale, seems to have been the kind of settlement contemplated by the provisions of the 1875 Act.

The 1897 Act, s. 6, adapted the provisions of the Settled Land Acts to registered land by permitting either the tenant for life of settled land to be registered as sole proprietor, or trustees with powers of sale, or persons with an overriding power of appointment, to be registered as co-proprietors. It must be remembered that "settled land" includes land vested in trustees on trust for sale, and "tenant for life" includes the person entitled to the income of the land or the money proceeds of its sale; under such a settlement of unregistered land, the trustees would have the legal estate, and the tenant for life would have an equitable estate only. The position of a tenant for life registered as sole proprietor of the fee simple differs little, juridically, from the position of trustees registered as co-proprietors; he has a beneficial interest in addition to a fiduciary ownership, and he is allowed to remain sole trustee as regards the fiduciary ownership.⁵

The 1897 Act, s. 6, also permits registered land to be transferred by a special form of instrument "to the uses of a settlement"⁶—a settlement already in existence, and of course registered land could always be transferred by an ordinary form of instrument to one or more persons to hold on trusts not disclosed on the register, or protected by a restrictive entry; the tenant for life, if made registered proprietor by transfer to him, will occupy the same position as if registered as first proprietor—he will in effect be a trustee.

The chief practical differences between the position of a tenant for life who is sole proprietor, and the position of trustees or other persons who are co-proprietors, will be these: It will be more important in the former, than in the latter case, for the persons beneficially interested in the land, or the proceeds of its sale, to see that the provisions of the Acts, with respect to restrictive entries

⁴ *Bradford Banking Co. v. Briggs* (1886), 12 A. C. at 32.

⁵ Cf. Settled Land Act, 1882, s. 53; *In re Ailesbury's Settled Estates*, [1892] 1 Ch.

506, affirmed [1892] A. C. 356; and see *In re Hunt's Settled Estates*, [1905] W. N. 141.

⁶ 1897, s. 6 (3); 1903, r. 128, ff. 22, 24.

being made on the register,⁷ are carried out; on the death of the sole proprietor the question of the successor to be placed on the register will be decided by reference to the instrument of settlement itself, whilst on the death of one of the co-proprietors, or even of the survivor, the settlement will not necessarily, and probably not at all, have to be referred to.⁸

The Settled Land Acts apply to personal settlements as well as strict settlements, the former being referred to, in the heading to s. 63 of the Act of 1882, as "settlements by way of trusts for sale;" but by s. 7 of the Settled Land Act, 1884, the statutory powers conferred by the Acts on tenants for life cannot, in the case of such a settlement, be exercised without the leave of the Court. "Settled land," in s. 6 of the 1897 Act, having the same meaning as in the Settled Land Acts, it follows that the equitable tenant for life under such a settlement can, on first registration being applied for, insist on being registered as proprietor of the land. It is presumed that, if the tenant for life were so registered, an inhibition would be entered on the register against the registered proprietor selling without leave of the Court in terms of the Settled Land Act, 1884, though nothing is said in the Land Transfer Acts or Rules as to this, and possibly the provisions of s. 7 of the Settled Land Act, 1884, might be held not to apply to registered land.

Where the land is already on the register, and it is proposed to put it into settlement, this could be done by transferring it to trustees, or to a beneficiary, and protecting the interests of beneficiaries by means of restrictive entries; whether the instrument of settlement were in form a personal settlement, or a strict settlement, would make no difference, since the interests of all persons other than the registered proprietor would be adequately protected by the restrictive entries. The special forms prescribed by s. 6 (3) of the 1897 Act, and r. 128—evidently drafted in view of strict settlements already in existence, and not personal settlements at all—seem unnecessary; their only effect appears to be to so embody notice of the trusts or interests of other persons than the registered proprietor as to make the instrument of transfer itself a sort of restrictive entry, if entered fully on the register, whilst if not entered fully on the register their insertion in the instrument of transfer seems useless; in any case, the entry of ordinary restrictive entries is contemplated as necessary.

The differences in the mode of recording on the register the fact that the land has been put into settlement thus appear to consist only of the necessary differences in stating or referring to the

⁷ 1875, s. 83 (3) (as amended); 1897, s. 6 (2); 1903, rr. 79-81, 224, 225.

⁸ 1875, ss. 41, 42; 1897, s. 6 (4, 5); 1903, rr. 183-192.

interests of persons entitled under the settlement; there is no necessary or essential difference in recording the fact of settlement corresponding to any difference between personal and strict settlements.

That the provisions of the Acts and Rules, so far as they apply to settlements, do go a long way towards obliterating the distinction between personal and strict settlements will appear more clearly later on. The effect of the system in modifying settlement transactions with registered land must now be dealt with: (1) As to personal settlements; (2) as to strict settlements.

1. Where the settlement is what is called a personal settlement—a settlement by way of trust for sale—the most convenient course is to transfer the land to the trustees, tenant for life, or whoever is or are to be the registered proprietor or proprietors, and then declare the trusts by separate deed as in the case of a settlement of stock.

This deed should of course contain power to postpone sale, etc., and other powers usually conferred on trustees for sale, and should also confer powers of management, leasing, etc., on the tenant for life, or on the trustees, as may be thought best. If preferred, the transfer of the land need not be completed by registration until after the solemnization of the marriage, and in most cases the instrument of transfer and the instrument of settlement itself will probably be executed at the same time, a day or two previous to the ceremony. Even if the registration were effected before the marriage ceremony takes place, there seems no occasion to make the registered proprietor a trustee for the settlor until the marriage, for the settlement is really conditional upon the marriage taking place,⁹ and the new registered proprietor would have to re-transfer to the settlor if the marriage did not take place within a reasonable time.

There is no need to employ the special forms of instrument (ff. 22-27), which are drawn in view of the settlement being a strict, and not a personal, settlement, and one already in existence. In the separate deed of settlement, the fact of the transfer having been made, and the new proprietor or proprietors having been or being intended to be registered, will be recited; this will be the only difference in the frame of the deed caused by the land being registered. As a matter of practice and convenience, it will be better to follow the analogy of an ordinary personal settlement, whether of land or stock, and make the trustees registered proprietors rather than make the tenant for life registered proprietor. If this is done, the restrictive entries will be simpler than if the tenant for life be made registered proprietor. Probably the only necessary restriction will be one requiring the consent of the tenant

⁹ *Dormer v. Ward*, [1901] P. at 33, 35.

for life to a sale during his life. In place of that restriction, or perhaps in addition to it, an entry of "no survivorship" under r. 224 might be made. The general principle, as regards restrictions, for the protection of settled land, is that any consent to sale or mortgage is to be required where this would be required in the case of unregistered land; any beneficiary may himself lodge a caution, etc., and the instrument of settlement, or a copy, may be filed for safe custody and reference.¹⁰

The settlor may, of course, keep the land in his own name and constitute himself a trustee, whether he becomes tenant for life under the settlement or not. In that case no change in the registered proprietorship will be made; the recitals in the deed of settlement will be made to accord with the facts, and restrictive entries will be made on the register, as in the case of the land being transferred to another person.

The subject of assurances which take effect under s. 49 will be referred to in the next section, "Transactions off the register." Changes on the register in consequence of appointments of new trustees are referred to at the end of the present sub-section, "Voluntary assurances."

2. In treating of the subject of strict settlements of registered land it will be necessary to deal separately with the cases of: (i.) Land being made subject to an existing settlement; (ii.) Land being settled *de novo*.

i. The provisions of the Acts and Rules relating expressly to settlements apply only to the case of land being made subject to a settlement—and a strict settlement only seems to be contemplated—which is already in existence.¹¹

The object of these provisions seems to be, not to indicate any particular method of effecting a settlement, but rather to secure, in favour of persons who are interested under a settlement created without reference to the special provisions of the Land Transfer Acts, the same rights of property—though in a somewhat different form—as they would have enjoyed had the land not been registered. By s. 6 (3) of the 1897 Act, when registered land "is assured to the uses of a settlement" the specially prescribed form of instrument of transfer is to "operate as a conveyance to the uses of the settlement;" by r. 128 the form is prescribed, and the transferee is to be registered "as the proprietor of the land." One form (f. 22) contains an habendum—"to hold to the uses" down to "charges or powers of charging"—which does not appear in another of the prescribed forms (f. 26), and did not appear at all in the forms appended to the 1898 Rules; the words of the habendum follow the wording of

¹⁰ 1897, s. 6 (3, 6); 1903, rr. 80-82.

¹¹ 1897, s. 6 (3, 5); 1903, r. 128 ff. 22-27.

s. 24 (2) of the Settled Land Act, 1882, but their insertion seems unnecessary, whether as a precaution against the multiplication of charges¹² or otherwise, and the clause certainly causes some confusion by employing the word "uses." It is submitted that the provisions above referred to (s. 6 (3) and r. 128) did not contemplate the word "uses" being inserted in the instrument of transfer (which would be operative without the words above quoted), and that the words "operate as a conveyance to the uses of the settlement" mean that the transferee, when registered as proprietor of freehold land, has an estate in fee simple and holds the land on trusts, and subject to powers and provisions, corresponding as nearly as possible with the uses, trusts, powers, and provisions of the settlement.¹³ The beneficial interests, represented by the uses, trusts, powers, and provisions of the settlement, will require protection by means of entries on the register varying in degrees of particularity. The method of protecting and securing these interests as rights of property, and the changes made necessary by the settled land being registered, will become clearer by considering the following propositions: (a) The person registered as proprietor of settled freehold land, whether the tenant for life or other person, has the entire fee simple vested in him; (b) Uses, as interests in registered land, do not confer any legal or other completely valid estate; (c) The interests of remaindermen under a strict settlement are not, as interests in registered land, legal or other completely valid estates; (d) Rent-charges and portions terms confer, as interests in registered land, only the right to have registered charges duly created.

a. The question whether a tenant for life, when registered as proprietor, takes the fee simple, has been discussed *ante*, pp. 86, 146. The conclusion there arrived at is that the statutory fee simple is, by the express language of the Acts, vested in any person who is registered as proprietor of freehold land. In addition to what is there said, it may be pointed out that the whole argument in favour of the view that a tenant for life who is registered proprietor has only a registered life estate and not the fee simple, really rests on the inference drawn from the words "*right of the registered proprietor*" being used in s. 6 (8) of the 1897 Act, whereas in s. 49 of the 1875 Act the words are "*estate and right of the registered proprietor*." Such a construction would, it is submitted, give rise to difficulties much greater than those which it is intended to remove, and this

¹² See *Trew v. Perpetual Trustees Co.*, [1895] A. C. 264; *In re Bristol*, [1897] 1 Ch. 946.

¹³ Under the Australian system analogous enactments have been made for adapting the provisions of the Settled Land

Acts to settled registered land, and what are "uses" in the settlement become in effect "trusts" where the settled land is registered: Hogg's Aust. Torrens Syst., 255, 977.

argument in its favour appears to be altogether too slender; such a construction is also opposed to the whole scheme of the Acts. In the Irish Act of 1891 the tenant for life is expressly registered as "limited owner," and the possibility of his having the whole fee simple is excluded by the express words of the Act.¹⁴ On the other hand, Scottish law affords an analogous illustration of an owner having the whole fee simple in himself, although his beneficial interest determines on his death and is not transmissible as his own property would be—so that he can rightly be described as a limited owner,¹⁵ and this seems to be the principle in accordance with which the Land Transfer Acts should be construed as they now stand. In English law the position of a tenant in tail, or owner of any other limited fee, comes very near the position of the tenant for life who is registered proprietor of freehold land; a tenant in tail has, according to the point of view adopted, both an estate for life, and an estate in fee (though not in fee simple).¹⁶ Further analogies are afforded by a corporation sole—who has the whole fee simple in himself, but is nevertheless unable to transmit it on his death as his own property, and is sometimes spoken of as though he were a tenant for life¹⁷—and a trustee who, by s. 30 of the Conveyancing Act, 1881, cannot transmit the fee simple vested in him by any testamentary disposition.

b. It has been pointed out (*ante*, p. 93) that the effect of making registration the badge of ownership of freehold land has been to abrogate the doctrine of seisin as regards registered land, at any rate in the technical common law sense. It is only by the combined operation of the common law doctrine of seisin and the Statute of Uses that a use confers on its owner any legal estate; along with seisin, the possibility of obtaining the legal estate by means of a use also disappears. Indirectly, the effect of the Land Transfer Acts is to repeal the Statute of Uses, with respect to registered land.¹⁸ The Statute of Uses is, in fact, no longer necessary for the facilitation of transactions with registered land, since the whole scheme and juridical theory of the alienation of land has been altered; alienation of land has been placed upon a footing which differs radically from that of the common law, the Statute of Uses, the

¹⁴ Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), s. 28. The Act is referred to *ante*, p. 30; s. 28 represents s. 5 in the Land Transfer Bill of 1889, also referred to *ante*, p. 29.

¹⁵ See the position of an heir of entail described in *Lord Advocate v. Moray*. [1905] A. C. 540, 545. And see *ante* p. 29.

¹⁶ See *Sturgis v. Morse* (1860), 28 Beav. at 403; *Doe v. Jenkins* (1829), 5 Bing. at 476, 30 R. R. at 706; 5 Jar. & By. Conv. (3rd ed.), 209.

¹⁷ See *Att.-Gen. v. Warren* (1818), 2 Swans. at 311, 19 R. R. at 78; *Ex parte Castle Bytham*, [1895] 1 Ch. 348, better reported 13 Reports 24.

¹⁸ It has been held that the effect of the Torrens Statutes under the Australian system is practically to repeal the Statute of Uses as regards registered land: *Lange v. Ruwoldt* (1872), 6 S. A. R. 75, 7 S. A. R. 1, referred to in Hogg's Aust. Torrens Syst. 892.

Real Property Act, 1845, and the Conveyancing Act, 1881. Changes in the ownership of the land depend only on changes being made in the register, and these changes can be made independently of any feudal theories relating to seisin. On the other hand, beneficial rights against the ownership of the land can be fully protected. If the statutory effect given by the Statute of Uses to a use can no longer have any operation, a use, as regards registered land, must be considered as no longer anything more than a trust.¹⁹

c. That the estate of a remainderman under a strict settlement, which if the land were unregistered would be a legal estate, is not, as an interest in registered land, a legal or complete estate, really follows as a corollary from the proposition that the tenant for life, or other person registered as proprietor of freehold settled land, has the whole fee simple in himself (*ante*, p. 213). The remainderman's interest may be best described as a right to be registered as successor to the person whose interest immediately precedes his own in the settlement. It will not usually be necessary for a remainderman to have any special entry made on the register by way of restriction, provided it appears by means of some restrictive entry or entries that the registered proprietor, whether tenant for life, trustee, or otherwise, is a fiduciary proprietor, and that his executor or administrator will not be entitled as a matter of course to be registered as his successor.²⁰

d. With respect to rent-charges and portions terms in a settlement, the view that what would be legal estates in unregistered land become, as regards registered land, rights of property which are entitled to be recorded on the register, but, until they are so recorded, are not strictly estates in the land—this view will apply also to rent-charges and portions terms, and the arguments already stated in favour of this need not be here repeated. As to securing rent-charges and portions terms by direct entry on the register, it will probably be found that this is not, in practice, always necessary, provided the fact appears clearly from entries on the register that the land is settled land. But, if necessary, such charges as jointure rent-charges, terms for raising portions, etc., and actual charges of money so raised, can all be recorded as registered interests—not merely protected beneficial interests—by means of one or other of the three kinds of registered charges (*ante*, p. 114) provided for by the Acts and Rules. An annual payment, ordinarily secured by a rent-charge, could equally well be secured by a registered annuity-charge (*ante*, p. 122); the power of raising a gross sum of money, usually secured by a term of years, could equally well be secured by

¹⁹ See note 18, *supra*.

²⁰ See 1875, s. 41; 1897, s. 6 (4, 5);

1903, rr. 81, 129, 186–191, ff. 6–13.

a registered gross-charge (*ante*, p. 122); the amount of a portion, or other gross sum of money, often raised through the medium of a mortgage effected by the trustees of a term of years, could equally well be raised by means of a registered mortgage-charge, charging the land directly without the necessity for the creation of a term.

The registration of a mortgage-charge, to secure money raised in pursuance of a power in the settlement, is expressly provided for by s. 6 (7) of the 1897 Act, and by virtue both of the Settled Land Acts²¹ and the Land Transfer Acts, the registered proprietor could only transfer the land subject to the charge. The sub-section provides for the creation of the charge by the registered proprietor at the request of the person entitled to have the security, and the charge is only to be given for "money actually raised at the date of the request." This does not seem to mean that the money must be paid over by the mortgagee before he can effectually request that a charge be created in his favour, but only that the registered proprietor cannot be compelled to create a charge—as, for instance, a gross-charge—merely to secure the right of a person entitled at some future time to have the sum raised. The sub-section (s. 6 (7) of the 1897 Act) seems to be framed on the model of s. 20 (2) (ii.) of the Settled Land Act, 1882, and perhaps with the same object, *i.e.* in order to enable the registered proprietor to transfer free of all charges for money not yet raised. The words "actually raised" occur in both enactments, and it has been held in Ireland that a charge by the tenant for life on his own estate to secure an existing debt is not a charge for securing money "actually raised" within the meaning of s. 20 (2) (ii.) of the Settled Land Act, 1882;²² the correctness of this decision seems doubtful, and it would create even greater difficulty if applied to the construction of the same words in s. 6 (7) of the Land Transfer Act, 1897. As in the case of unregistered settled land, so in the case of registered land, the person entitled to have the money raised in the future would be sufficiently protected by notice of the settlement being in fact entered on the register; if the registered proprietor did create a registered gross-charge for money, not yet raisable, the question would have to be decided, in the event of the registered proprietor selling, whether this gross-charge should remain as a charge on the land, or be removed in accordance with the provisions of the Settled Land Act. Rule 171 provides for notice of a paramount charge not yet raisable being registered and entered on the instrument of charge by which a puisne charge raisable at once is secured; this might cause some

²¹ Settled Land Act, 1882, s. 20 (2);
In re Keek and Hart's Cont., [1898] 1 Ch.
617, 624.

²² *Connolly v. Keating*, [1903] 1 I. R.
353. But s. 50 of the Settled Land Act,
1882, was not referred to.

difficulty if the land were sold, and transferred to the purchaser subject to the registered charge for the money already raised.

A more difficult question would have to be decided with respect to a registered annuity-charge created to secure a jointure, or other annual payment, for which a rent-charge was created in the settlement. Under the provisions of the Land Transfer Acts such a charge is on the same footing as a mortgage-charge, in so far as it remains charged on the land when the latter passes to a purchaser; under the provisions of the Settled Land Act such a rent-charge is an estate, interest, or charge subsisting under the settlement, and, upon conveyance by the tenant for life to a purchaser, ceases to be a charge on the land.²² If the provisions of s. 20 of the Settled Land Act are to govern the case, then on a sale to a purchaser, and transfer by the registered proprietor (being tenant for life under the settlement), the annuity-charge would have to be removed from the register, and could be removed as a matter of right, so as not to continue as a charge on the land in the hands of the purchaser. If the provisions of the Land Transfer Acts are to govern, then the annuity-charge cannot be removed as a matter of right, and will continue to affect the land after registration of the purchaser as proprietor. It is submitted that the governing provisions are those of the Land Transfer Acts. S. 20 of the Settled Land Act, 1882, relates only to the statutory conveying capacity expressly conferred by the Act on the tenant for life. Under the Land Transfer Acts the tenant for life could not vest the land in a purchaser unless he were the registered proprietor of the land, and although the Settled Land Acts certainly confer rights on a tenant for life which can be made equally effective as regards registered land, yet these rights can only become effective by means of the machinery of registration; a transfer of registered land by a registered proprietor to a purchaser does not operate in any way directly by virtue of s. 20 of the Settled Land Act, 1882, but solely—as a matter of conveyancing—by virtue of the Land Transfer Acts. For these reasons it is submitted that the statutory effect of s. 20 of the Act of 1882 cannot be extended to registered land; and in the case supposed the registered annuity-charge could only be removed from the register with the consent of the owner of the charge, and would continue to charge the land until so removed. The same principle should also apply to the case of any charge registered for money actually then due, whether technically “raised” or not.

If leasehold land is to be made subject to an existing settlement, it can be transferred by a prescribed Form (f. 27) analogous to that prescribed for freehold land, but following the wording of s. 24 (3)

²² See note 21.

of the Settled Land Act, 1882; under the latter enactment, however, the land must be assured to the trustees of the settlement, whilst registered leasehold land may, apparently, be transferred to the tenant for life as in the case of freehold land.

It is at the option of the tenant for life whether the settled land should be registered in his own name, in the names of the trustees with powers of sale (if any), or in the names of the donees of an overriding power over the fee (if any).²⁴ In most cases the tenant for life will probably elect to be registered as proprietor on first registration. The Rules and Forms also contemplate, apparently, that the tenant for life should have the same option when land already registered is made subject to an existing settlement, though this is not clear from the 1897 Act itself; in this case also it seems probable that the tenant for life will usually become the registered proprietor by having the land transferred to him. As registered proprietor he will then have the statutory rights conferred on registered proprietors by the Land Transfer Acts, and the restrictive entries will show that, although tenant for life under a settlement, the Settled Land Acts confer on him the right to make use of his statutory rights as registered proprietor. In this way a perfect title may, on sale of the land, be conferred on a purchaser by registered transfer from the registered proprietor; but, of course, registration of the transfer must be made possible by obtaining the necessary consents and receipts from persons other than the registered proprietor who are protected by restrictive entries.

In the event of trustees with powers of sale, or donees of a power, being the registered proprietors, the statutory rights conferred on the tenant for life by the Settled Land Acts will not operate in quite the same manner. These statutory rights, and the statutory rights under the Land Transfer Acts, will now be vested in different persons instead of in the same person, and if the statutory rights under the Settled Land Acts are to continue to belong to a tenant for life who is not registered proprietor of the land, these rights will have to be exercised through the medium of the registered proprietor or proprietors for the time being upon the request of the tenant for life, somewhat as investments are, by s. 22 (2) of the Settled Land Act, 1882, to be made by the trustees "according to the direction of the tenant for life." The provisions of the 1897 Act (sub-ss. 7 and 9 of s. 6) seem to indicate that transactions with the settled land are to be carried out by the trustees, etc., registered as proprietors, upon the request of the tenant for life, and not directly by the tenant for life himself under the provisions of s. 20 of the Settled Land Act, 1882.²⁵

²⁴ 1897, s. 6 (1).

²⁵ This is the method adopted in most

ii. As already stated (*ante*, p. 212), the provisions of the 1897 Act relating to settled land and settlements apply only to the case of a settlement—*ex hypothesi* drawn in the ordinary form, and with reference to unregistered land—being already in existence, and its becoming necessary to make the registered land subject to such a settlement. There is no express provision in the Acts or Rules for settling registered land *de novo*, by way of strict settlement or otherwise. With respect to personal settlements there is, however, no difficulty, as the land has only to be transferred to registered proprietors who are made trustees for sale, whilst the settlement is filed and the interests of the beneficiaries protected by restrictive entries on the register.

With respect to strict settlements the case is altogether different. It is not intended that the land settled by a strict settlement is to be converted into money as a matter of course, and various interests are created through the machinery of uses, rent-charges, and terms of years—machinery which cannot be applied with perfect exactitude to registered land, though identical results may be reached in a different way.

If registered land is comprised in a strict settlement drafted without special reference to registered land, the provisions of the Acts and Rules for applying an existing settlement to registered land will enable the necessary interests to be validly created on the register. Such a deed of settlement is, however, in the nature of an executory instrument, and—in the absence of any positive necessity—it cannot be called scientific conveyancing to draft an instrument which, though purporting to be complete in itself, cannot be carried into effect as it stands, but has to be supplemented by more accurately framed instruments. It is quite possible to frame a settlement (though not contained in one instrument) of registered land which shall be in accordance with the new system, and shall yet confer the same rights of property as are conferred by an ordinary strict settlement of unregistered land.

There is one practical consideration, however, which makes it desirable that the provisions of any settlement should be capable of application both to registered and unregistered land—that, in fact, a settlement prepared with reference solely to registered land should be intelligible if it becomes necessary to construe it as comprising unregistered land, just as the Acts and Rules provide for the converse case of an unregistered land settlement being applied to registered land. It may happen that the settled registered

jurisdictions under the Australian system, for reconciling the Torrens Statutes and the Settled Land Acts, though New

Zealand may perhaps form an exception: see Hogg's Aust. Torrens Syst., 255, 909, 977.

land is sold or exchanged, and unregistered land substituted for it. This must be a case that is likely to occur pretty frequently until the total area of land on the register is considerably increased. It is not at present advisable to prepare a settlement solely with reference to registered land. Nevertheless, that is no reason why a settlement of registered land should be drafted as though uses, rent-charges, and terms of years were necessary or convenient interests by which to secure a succession of estates, jointures, or portions, in or from registered land.

The differences and additions, which it is conceived should, in the case of registered land, be made in and to an ordinary form of settlement of unregistered land, are shown by comparing the following draft with the precedent of a strict settlement given in 2 *Prideaux' Precedents* (19th ed.) 380, sec. ii., *Settlements of Real Estate*, No. I.

This indenture, made the — day of —, Between A. B. of, etc. (*intended husband*), of the first part, C. D. of, etc. (*intended wife*), of the second part, and E. F. of, etc., and G. H. of, etc. (hereinafter called the trustees), of the third part :

Whereas the said A. B. is registered as proprietor under the provisions of the Land Transfer Acts, 1875 and 1897, of the freehold land comprised in title No. — being land situate at — containing [area] :

And whereas a marriage is intended shortly to be solemnized between the said A. B. and the said C. D., and it was agreed on the treaty for the said marriage that the said land should be settled in manner hereinafter appearing :

And whereas in order to carry the said settlement into effect the said A. B. has already executed the three following instruments, namely :

- (a) An application for the following restriction to be entered on the register, that is to say : " Except under an order of the registrar, no transfer of the land is to be registered unless made on sale, exchange, or partition, the consideration money being paid to E. F. of, etc., and G. H. of, etc., or into Court.

" Except under an order of the registrar, no charge (other than two charges created respectively by two instruments of charge of even date herewith) is to be registered, and no lien by deposit of certificate is to be created, unless expressed to be for one of the purposes for which a tenant for life is authorized by law to raise money on mortgage of the settled land, the money being paid to E. F. and G. H."

- (b) An instrument of charge for securing to the said C. D. an annual payment of £200 during the joint lives of the said A. B. and C. D. and also securing to the said C. D. an annual payment of £500 during her life after the death of the said A. B. in case the said C. D. survives the said A. B.

- (c) An instrument of charge in favour of the trustees charging the said land with the sum of £15,000 to be raised and paid to the trustees.

Now this indenture witnesseth that in consideration of the said intended marriage it is hereby declared as follows :

1. After the said marriage the said A. B. shall be the tenant for life (within the meaning of the Settled Land Acts, 1882-1890) of the said land, and after the death of the said A. B. the persons entitled to the said land and entitled to be registered as proprietors thereof successively subject to proper restrictions shall be the persons who would be seised for freehold estates in possession if the said land had

been unregistered land and had been limited to the said A. B. for life with remainder to the first and other sons of the said A. B. by the said C. D. successively according to seniority in tail male with remainder to the said A. B. in fee simple.

2. In the event of unregistered land becoming subject to this present settlement, it shall be conveyed and limited, as nearly as circumstances permit, to secure to the said C. D. the said recited annual sum of £200 by a rent-charge and (subject thereto) unto the said A. B. for life without impeachment of waste, with remainder to secure to the said C. D. the said recited annual sum of £500 by a rent-charge, and (subject thereto) unto the trustees for the term of one thousand years without impeachment of waste upon trusts to be declared; and (subject thereto) unto the first and other sons of the said A. B. by the said C. D. successively according to seniority in tail male, with remainder unto the said A. B. in fee simple.

3. The said land is charged with the hereinbefore recited sum of £15,000 (reducible as hereinafter provided) for the portions of the children of the said intended marriage [charge for portions: *see* 2 Prid. (19th ed.) 383].

4. The said charge for £15,000 is vested in the trustees as registered proprietors thereof upon trust that they shall either procure the registered proprietor of the land for the time being to create a registered charge by way of mortgage or by any other reasonable way or means raise the sum or sums of money to which any child or children shall become entitled [trusts of portions term: *see* 2 Prid. (19th ed.) 385, substituting "subject to the charge" for "in remainder, etc." at the end of the paragraph].

5 and 6. [As in 2 Prid. (19th ed.) 385, 386, paras. 4 and 5.]

7. [As in 2 Prid. (19th ed.) 386, 387, para. 6, with the following alterations:

For "term of one thousand years," substitute "charge of £15,000."

For "appoint" to future wife a "rent-charge," substitute "give" an "annuity."

For the clause empowering a term to be limited to trustees, substitute "vest the said last-mentioned charge in trustees."

For "appointment" a few lines lower down (p. 387), substitute "instrument of charge].

Such of the remaining paragraphs 7-15 (omitting 11 and 12, relating to copyholds and leaseholds) of the precedent in *Prideaux* as are required may be used without any substantial alteration.

The first and third recitals show that the settlor, being already, and intending to continue to be, the registered proprietor, has no occasion to transfer or convey the land at all. The charge in favour of the wife combines the pin-money and jointure charges, which are usually secured by separate rent-charges under the Statute of Uses. The charge here recited is an annuity-charge;²⁶ the recital sufficiently indicates the contents of the instrument of charge, but the following additions should also be made to the prescribed form—

a. The consideration should be stated as "in consideration of an intended marriage between myself and C. D. of, etc."

b. Both "annuities" should be expressed to be payable to C. D. "without power of anticipation."

The charge in favour of the trustees is a gross-charge, and answers to the term for one thousand years for raising portions. The consideration in the instrument of charge should be stated to be

²⁶ 1897, s. 9 (3); 1903, r. 160, f. 45.

the intended marriage, and it would probably be sufficient that the sum of £15,000 only should be charged on the land without interest, leaving the necessary mortgage-charges to be created by the registered proprietor of the land upon the request of the trustees. If preferred, the trustees might have power conferred upon them to raise money by way of sub-charge with interest. Possibly it is not absolutely necessary that any such charge should be given to the trustees, reliance being placed on the restrictive entries as a sufficient protection of the power to raise portions, which in that case would have to be stated more precisely in the settlement itself; but it seems better that a definite charge should appear on the register.

Paragraph 1.—It will be noticed: (1) that what would, in the case of unregistered land, be legal limitations—usually effected through the medium of the Statute of Uses—are here treated as executory directions for the course of succession and in the nature of equitable interests only; (2) that the course of succession to the land is kept distinct from the rent-charges, which usually also are legal interests created through the medium of the Statute of Uses.

Paragraph 2.—This provides for the contingency of the settlement afterwards affecting unregistered land.

Paragraphs 3 and 4.—These provide for the jointure and portions charges separately from the limitations of the land, and are created by registered instruments independently of the present deed.

The remaining paragraphs differ only from those of an ordinary settlement in containing slight consequential alterations, and require no further mention.

Whether the settlement be effected by formal conveyance purporting to create legal limitations, supplemented by restrictions and registered charges on the register, or whether it be effected primarily by restrictions and registered charges, accompanied by a separate declaration as to the beneficial interests—in either case these beneficial interests off the register, though identical as rights of property with, differ juridically from, the estates in unregistered land conferred by legal limitations. Whatever the method of their creation, they are in the nature of equitable interests—for life, in tail, and in fee. This is illustrated in a practical way by considering the question of re-settling registered land.

In the case of unregistered land a re-settlement is usually effected by the tenant for life as protector of the settlement and the first tenant in tail in remainder joining to bar the entail, and make the son (the tenant in tail) tenant for life, in remainder expectant on his father's death, with remainder to the son's children in tail. If the land were not re-settled, the son (tenant in tail) would, on his father's death, become tenant in tail in possession, and could at once

bar the entail and thus get the entire fee simple vested in himself. So with registered land, the son (tenant in tail off the register) would, on his father's death, be entitled to be registered as proprietor with proper restrictions to protect the interests of his own issue and remaindermen,²⁷ but he could at once proceed to bar the quasi-equitable entail and, on the footing of being entitled to the fee simple without any restraint on his powers of alienation, insist on the restrictions being removed.²⁸

A disentailing assurance could be executed and enrolled in respect of the registered land under s. 40 of the Fines and Recoveries Act, even on the footing of the entail being purely equitable. The entail could also be effectually barred by the trustees, or other persons concerned, consenting to the removal of the restrictions from the register, and a transfer of the land for value would then, in the absence of mala fides in the transferee, get rid of the beneficial interests of the issue and remaindermen; the adoption of this course in practice is not, however, recommended.

It seems to be more technically correct to frame a disentailing assurance of registered land on the model of an assurance by an equitable tenant in tail, than to treat the interest of the tenant in tail as a legal estate; in the one case the assurance would be made to a trustee in trust for the grantor (tenant in tail) in fee simple, or as he should direct; in the other case the assurance would be made to a grantee (to uses) to the use of the grantor in fee simple—which, if seisin and the Statute of Uses apply to unregistered interests in registered land, would give the grantor the legal estate—or to such uses as he should appoint. If uses are held not to confer any legal estate, an assurance to uses will be construed on the footing of the uses being ordinary trusts,²⁹ but even if the tenant in tail be held to have a legal estate, an assurance to a trustee in trust for the grantor would be sufficient to bar the entail.³⁰ Thus, in either case the interests of the issue and remaindermen will be effectually defeated.

In the case of unregistered land the disentailing assurance usually conveys the land to such uses as the father (tenant for life) and the son (tenant in tail in remainder) appoint; in the case of

²⁷ 1897, s. 6 (5); 1903, rr. 186–190.

²⁸ In the Australian case of *Allison v. Petty* (1899), 9 Q. L. J. 125, where the grantee to uses of settled land was registered proprietor of the fee simple in trust for tenants in tail under the settlement, the execution by the latter of a disentailing assurance was held effectual to bar the entail in equity.

²⁹ See *In re Dudson's Cont.* (1878), 8 Ch. D. 628.

³⁰ *Peacock v. Eastland* (1870), L. R.

10 Eq. 17. This case shows that where the grantor takes an equitable estate only, and not a legal estate under the Statute of Uses, it is a wise precaution to have the disentailing deed executed by the trustee, so as to prevent his disclaiming. A grantee to uses cannot, apparently, disclaim, at any rate without actually executing a deed: *Nicolson v. Wordsworth* (1818), 2 Swan. 365, 19 R. R. 86; *In re Dudson's Cont.* (1878), 8 Ch. D. at 631.

registered land, the analogy to equitable estates above suggested would, in order to be complete, require the beneficial interest in the land to be assured to a trustee in trust as the father and son jointly appoint. But it seems better not to confer anything in the nature of an equitable power, but simply convey to the trustee "in trust for" the father and son, who would then take as joint tenants in fee; this will not cause any inconvenience, as their interest will be off the register, and will be subject to the express directions of the re-settlement to be executed contemporaneously. Powers of appointment have no place assigned to them in the system by the Acts or Rules;⁸¹ they are, in fact, only expressly mentioned in ss. 1 (2) and 6 (1) of the 1897 Act, and indirectly referred to in ss. 5 and 11 of the 1875 Act. S. 1 (2) refers to real estate passing by will, and is not confined to registered land; ss. 5 and 11 treat the donee of a power of disposition, over land not yet registered, as a person entitled to be registered as first proprietor; s. 6 (1) enacts that, with the concurrence of the tenant for life, the donees of an overriding power of appointing the fee simple of settled land—not yet registered—may be registered as proprietors of the settled land. Thus, the donee of a power of appointment is regarded only as a person entitled to the proprietorship of the land, and as a registered proprietor he would have the same estate as any other registered proprietor. No provision is made for any such interest as a registered power; the complete exercise of a power—whose immediate operation by execution of a deed is confined, by reason of an existing registered proprietorship, to its effect on the beneficial interest in the land or the right to have the registered proprietorship—could only be attained by rectification of the register under r. 151. This rule contemplates the existence of a state of things which may be compared either: (1) to a legal estate in unregistered land being vested in a bare trustee, the cestui que trust having what may be called both an equitable power and an equitable estate; or (2) to a legal estate being limited to one, subject to a power of ownership in another;⁸² the interest off the register is sufficient to entitle the owner to be placed on the register, in the room of the proprietor who is actually there for the moment, and the rule enables the registrar, on production of proper evidence, to alter the register accordingly. So far as the registered estate in the land is concerned, a power of appointment over registered land must be regarded as a mere capacity or right to have the existing proprietorship altered in some way, either by change in the actual proprietorship of the land, or by

⁸¹ The power of sale conferred on the registered proprietor of a charge may perhaps be considered to be an exception in some sense. Something like a registered

power is to be found provided for in some of the Australian Torrens Statutes: Hogg's Aust. Torrens Syst. 475, 878.

⁸² See Far. Pow. (2nd ed.), 2, 8.

the registration of charges or the entry on the register of further or other restrictions than are already there. So far as the unregistered interests—interests liable to be defeated by the disposition of the registered proprietor—are concerned, a power of appointment is on the footing of an ordinary equitable power.

It would seem, then, that the disentailing assurance, made in view of re-settlement, should be an ordinary deed purporting to convey the land to a trustee in trust for the father (tenant for life) and son (tenant in tail). The father can either continue on the register as sole proprietor, or can transfer to himself and the son, appropriate restrictions being entered on the register in either case. Probably it will be better to leave the registered proprietorship unaltered, and for the father to continue to be sole proprietor. Forms of instrument of transfer and forms of restriction are prescribed by the 1903 Rules for the case of the donees of an overriding power of appointment being registered as proprietors (ff. 10, 24). The same principles apply in either case, and it will be assumed in the following remarks that the father (tenant for life in possession) continues on the register as sole proprietor. The questions of the restrictions to be entered, the charges to be registered, and the form of the deed of re-settlement itself have then to be considered.

As in the case of the settlement referred to *ante*, p. 220, it will be convenient to take the form of re-settlement in 2 *Prideaux'* *Precedents* (19th Ed.), 394, *Settlements (Real)* No. III., as typical. The principles on which the settlement at p. 380 of *Prideaux* was adapted will apply in the present case, and it will not be necessary to set out many clauses in full. The plan of disentailing by a conveyance to a trustee instead of a grantee to uses will, however, necessitate the trustee being made a party to the deed of re-settlement.

The restriction will be as follows :—

Except under an order of the registrar, no transfer is to be registered unless made on sale, exchange, or partition, or with the consent of A. B. of, etc. (*son*), the consideration money being paid to E. F. of, etc., and G. H. of, etc. (*trustees of settlement*), or into Court.

Except under an order of the registrar, no charge (other than a charge created in favour of A. B. by instrument of charge of even date) is to be registered, or lien by deposit of certificate created, unless with the consent of the said A. B. or expressed to be for one of the purposes for which a tenant for life is authorized by law to raise money on mortgage of the settled land, the money being paid to the said E. F. and G. H.

An annuity-charge in favour of the son will be created by the father (registered proprietor) executing a statutory instrument of charge, which will of course be registered.

It seems better to leave the powers of charging for jointures,

etc., as contingent charges, and not to register any gross-charge as was recommended in the former settlement.

With respect to the directions for the course of succession to the land which, in the modified form of settlement, take the place of the ordinary limitations of the legal estate, it will be noticed that paragraph 1 of the precedent in *Prideaux* (p. 397) exercises the power of appointment given in the disentailing assurance to the father and son; paragraph 2 brings other land into settlement by conveyance to the trustees (as mere grantees to uses); paragraph 3 (p. 398) declares the uses upon which both classes of land are held, thus creating—subject to an overriding power of appointment in the father and son—the successive limitations of the legal estate in the land, together with the legal rent-charge in favour of the son. In the modified form of settlement the legal rent-charge is turned into a registered charge, and need not be referred to in the settlement itself; the appointment and conveyance to uses in paragraphs 1 and 2 of *Prideaux* will not have any corresponding provisions in the new form of settlement, since the registered proprietorship is unaltered; the legal limitations in paragraph 3 of *Prideaux* will have to be adapted, as in the former settlement (*ante*, p. 220), and the new clause will be as follows:

At any time after the execution of these presents the said W. B. (*father*) may, with the consent of the said A. B. (*son*), and after the death of the said A. B. and all his issue in tail male with the consent of C. B. (the second son of the said W. B.), and after the death of the said C. B. and all his issue in tail male with the consent of D. B. (the third son of the said W. B.), and after the death of the said D. B. [*and so on through all the sons of W. B. already born*], make any registered disposition or dispositions of the settled lands or any part or parts thereof either by way of transfer or by way of charge, or with the like consent may make any unregistered disposition or dispositions of the settled lands or any part or parts thereof, and apply to have entered on the register any caution, restriction, inhibition or other restrictive entry or entries; and in default of and until and subject to the effect of any such registered or unregistered disposition or dispositions, or any such restrictive entry or entries, the said W. B. (*father*) shall be the tenant for life (within the meaning of the Settled Land Acts, 1882–1890) of the settled lands, and after the death of the said W. B. the persons entitled to the settled lands, and entitled to be registered as proprietors thereof successively, subject to proper restrictions, shall be the persons who would be seised for freehold estates in possession if the settled lands had been unregistered land, and had been limited to the said W. B. during his life without impeachment of waste [in restoration of his former life estate under the said indenture of settlement (*recited*), and so that the powers of jointuring a future wife and of charging with portions for his children by a future wife given to him by the said indenture of settlement had been also restored and remained in full force]: with remainder to the said A. B. during his life without impeachment of waste, with remainder to the first and other sons of the said A. B. successively according to seniority in tail-male: with remainder to the said C. B. (*second son*) during his life without impeachment of waste, with remainder to the first and other sons of the said C. B. successively according to seniority in tail-male: with remainder to the said D. B. (*third son*) during his life [*and so on*]

through all the sons of W. B. already born]: with remainder to each and every son of the said W. B. hereafter to be born successively according to seniority in tail-male: with remainder to the said W. B. in fee simple.

It will be noticed that in the above paragraph the quasi-powers of appointment are placed by themselves, and not along with the limitations or course of succession to the land.

II. A will which purports to create a strict settlement of land does not now, even in the case of unregistered land, on the testator's death vest any legal estate in a devisee; under Part I. of the 1897 Act the land vests in the executor, or administrator with the will annexed, who hold it on trust for the persons beneficially entitled, and the latter may require it to be assured accordingly. The will is, in effect, an executory instrument only, both as regards registered and unregistered land; there is, therefore, less reason than in the case of a settlement inter vivos to distinguish between registered and unregistered land. Taking the form, No. XXV., at p. 715, in vol. ii. of *Prideaux' Precedents* (19th ed.) as a type, and particularly paragraph 3, which creates a strict settlement, the only addition which seems to be really necessary, in order to adapt the will to registered land, has reference to the term of five hundred years mentioned in that paragraph, and also in paragraph 4. Since the creation of such terms is not in complete harmony with the new system, it would be advisable to add the following to the clause in paragraph 3 creating the term (p. 716)—

Provided that in the case of registered land the expression "term of 500 years" in this my will shall be taken to mean a registered charge on the land of a gross sum of £ — (*the maximum likely to be wanted*) reducible to such sum as my trustees shall in their discretion think fit, and the devise of the said term to my trustees shall be taken to mean that my trustees are to be entitled to have the said registered charge duly created.

The case of a devise to trustees in trust for sale requires no express notice here.

The subject of wills is also referred to in Chapter VI., *post*, "Succession to land on the death of the proprietor."

III. The word "settlement," when used of dispositions other than settlements on marriage, has a wider meaning than is given it in the Settled Land Acts, and includes many dispositions which have no element of successive limitations in them, as under the Bankruptcy Acts, but are merely voluntary assurances. The most important kind of voluntary settlement, in the proper sense, is a post-nuptial settlement on wife and children. Voluntary assurances need only be referred to here in so far as they involve a transfer or creation of an interest on the register which would not be for value, and would therefore not carry the same warranty of title to the

transferee. These registered transactions may occur either: (1) Upon the making of the original settlement or assurance; (2) Upon a change of trustees of any settlement for value or voluntary.

1. The subject of the transfer of land without valuable consideration is dealt with in ss. 33 and 38 of the 1875 Act, the one section relating to freehold, and the other to leasehold, land; under these sections—which are identical in their terms—the only difference between the effect of a registered transfer made for, and one made without, valuable consideration, is that in the latter case the transfer is subject to unregistered interests “so far as the transferee is concerned,” in the same way that the estate of a first proprietor may be subject to unregistered interests “as between himself and any persons claiming under him” (ss. 7, 13), though in both cases a registered purchaser for value will have a warranted title free from these unregistered interests.³³

The subject of charges on land made without valuable consideration is not expressly mentioned in the Acts or Rules. Ss. 22-28, though in most of their provisions applicable to charges created without any consideration, are primarily—as indicated by the heading “*mortgage of registered land*”—concerned with mortgages, which are nearly always created for valuable consideration. But just as a charge is, for many purposes, as warranty of title, etc., to be treated as a transfer pro tanto (*ante*, p. 115), so it would seem that in the same way a charge for value is to be distinguished from a charge made without valuable consideration, and that the difference between the two corresponds with the difference between the two kinds of transfer.

With respect to the transfer of charges, s. 40—which authorizes a charge to be transferred, as amended by the 1897 Act, protects a transferee for value much in the same way as a transferee for value of land is protected, and by implication this protection does not apply to the case of a charge being transferred without valuable consideration. Apparently a charge, which had originally been created without any valuable consideration passing, would, on being transferred for value, be on the same footing as though it had been created for value.

On the question of value or no value being raised as a test of the validity of a transaction, an *ex post facto* valuable consideration might be shown, as in the case of unregistered land, or extrinsic evidence might be given that a transaction apparently voluntary was really for value.³⁴

³³ 1875, ss. 30-33, 35, 38; 1903, rr. 140-142.

³⁴ See *In re Carter and Kenderdine's Cont.*, [1897] 1 Ch. 776; *Hance v. Harding*

(1888), 20 Q. B. D. 732. For a case under the Australian system of an apparently voluntary transfer held good on extrinsic evidence of valuable consideration, see

The effect of transfer to a purchaser for value, by a person who gave no value, being to confer a valid title on the former, is exactly analogous to the effect of a conveyance to a purchaser for value by a person who gave no value and against whom the voluntary conveyance could have been avoided by the trustee in bankruptcy under s. 47 of the Bankruptcy Act, 1883.³⁵ The position of the voluntary transferee of registered land, before transfer by him to the purchaser for value, is not, however, quite the same as the position of a voluntary grantee of unregistered land before conveyance to the purchaser for value. In the case of unregistered land, the settlor or grantor can, if the voluntary conveyance were not *bonâ fide*—and before the Voluntary Conveyances Act, 1893, it made no difference whether it were *bonâ fide* or not—avoid the effect of his conveyance altogether by himself conveying to a purchaser for value. In the case of registered land, it would seem necessary either that the register should be rectified by the name of the purchaser for value being entered in place of the proprietor who took by voluntary transfer, or that the latter should execute an instrument of transfer in favour of the purchaser for value.³⁶ So long as the voluntary transferee remained on the register as proprietor, a transfer by him—in the absence of some restrictive entry on the register—to a purchaser who registered would confer a good title on the latter.

2. Assurances of property by one trustee to another trustee, where the beneficial interest is unchanged and the transaction is merely a change of trustees, cannot but be considered as made without valuable consideration. Hence it seems clear that changes of registered proprietorship, made merely in consequence of a change of trustees, are to be considered as “made without valuable consideration” under ss. 33 and 38. It also seems clear that, although these sections apply in terms to transfer of land only, transfer of charges is on the same footing.

On an appointment of new trustees being made, whether by an instrument *inter partes* or by an order of Court, the ordinary and proper course appears to be for an instrument of transfer to be executed by the then registered proprietor or proprietors in favour of the new trustees, who will thus on registration of the instrument become the registered proprietors of the property—land or charge. If a transfer cannot be effected by the execution and registration of a statutory instrument of transfer, a vesting order must be obtained and rectification or correction of the register will then be

Bloomfield v. Rummage (1897), 23 V. L. R. 365, following *Hanco v. Harding*.

³⁵ See *In re Carter and Kenderdine's Cont.*, *supra*.

³⁶ This is so under the Australian system: the cases are cited in Hogg's *Aust. Torrens Syst.* 839.

effected on production of the order at the registry, or other proceedings taken for rectification of the register.³⁷

References to trusts are, as far as possible, to be excluded from the register;³⁸ but just as on transfers of mortgages of unregistered land to new trustees—although references to trusts are to be avoided as far as possible—some reference to the existence of a trust is almost unavoidable, and a reference to the existence of a trust is in practice allowed and sanctioned by the Rules,³⁹ so such a reference seems unobjectionable in transfers to new trustees of registered land or charges. On the analogy of an ordinary transfer of a mortgage to new trustees, the instrument of transfer should contain a statement to the effect that the transferors are trustees for the transferees, and are transferring the property at the request of the latter. This may be done by way of recital and “in consideration of the premises,” as in an ordinary deed; but it will be better to omit the recital and frame the statutory instrument of transfer thus: “In consideration of our holding the land (*or charge*) as trustees for (*new trustees, adding in the case of a charge*: to whom the same belongs on a joint account) and of our having been requested to transfer the same to them, we (*old trustees*) hereby transfer,” etc.

Under the provisions of ss. 33 and 38 the transferees will be in exactly the same position, with respect to their capacity to confer title on a purchaser from them who is duly registered, as though the transfer to them had been for value; and, although these sections refer expressly to land only, it seems hardly to admit of doubt that the same difference between transfers for and without value would be held to exist in the case of charges; as already pointed out, the exact effect of registration of charges is not stated with the same degree of particularity as in the case of land.

SECTION 3.—TRANSACTIONS OFF THE REGISTER.

Transactions with registered land which are carried out “off the register,” or independently of the registered proprietorship, have been referred to already in Chap. III. secs. 3 and 4, and Chap. IV. sec. 2, *ante*, pp. 142, 213. In the former of these places the question of the existence of a “legal estate” in registered land was principally dealt with, in the latter the question of the application of the Statute of Uses to registered land.

Transactions off the register are expressly authorized by s. 49 of the 1875 Act, and the general conclusion already arrived at is that,

³⁷ 1875, ss. 95–97; 1903, r. 151.

³⁸ 1875, s. 83 (1), as amended by 1897, sched. 1.

³⁹ See, for instance, 1903, rr. 183, 196,

which direct the words “official receiver” or “trustee,” “executor,” etc., to be placed on the register.

notwithstanding the express authority to create "estates, rights, interests, and equities" in registered land as "if the land were not registered," the express condition that this is to be "subject to the maintenance of the estate and right" of the registered proprietor involves two results: First, that for practical purposes, and regarded as enforceable rights of property, estates and interests off the register created under s. 49 are on the level of equitable interests only in unregistered land; secondly, that from a juridical point of view these estates and interests do not, even when in the nature of freehold interests, depend for their efficacy either upon the doctrine of seisin or upon the Statute of Uses.

Practically, therefore, estates and interests created under s. 49 appear to operate very much as estates and interests created in unregistered land by the owner of an equity of redemption in freehold land when the legal fee simple is in the mortgagee; these estates and interests are allowed by a Court of equity to take effect, as rights of property, in the manner in which they would have taken effect had the person creating them had the legal estate,¹ but necessarily without any technical support from the rules of the feudal or common law estate. In practice, if not in theory, every kind of interest which could be created by the owner of the technical legal estate can be created by the owner of an equity of redemption. So, it would seem, every usual interest which exists in unregistered land could, by analogy, and as it were on a lower plane, both juridically and for purposes of practical efficacy, be created in registered land off the register under s. 49.

The form of conveyances, etc., to be employed in transactions off the register need not differ from those ordinarily employed in transactions with unregistered land, since they would, if necessary, be construed on the same principles as govern the construction of instruments dealing with an equity of redemption. It is possible, however, that questions of construction may arise which depend upon whether the unregistered estate is to be regarded as a legal estate or an equitable estate. Thus, suppose the registered proprietor of freehold land to execute a conveyance in the ordinary form purporting to convey the land "unto A. in fee simple, to the use of B. for life, with remainder to the use of C.;" such limitations of unregistered land would give C. a legal estate for life only, and if all the ordinary rules of conveyancing and real property law are to apply to registered land, in the case supposed C. will take a life estate only, and will not have either a fee simple off the register or a right to a transfer of the statutory fee simple. But if ordinary

¹ See *Nounville v. Greenwood* (1822), *Cont.* (1878), 8 Ch. D. 628. T. & R. 26; 23 R. B. 174; *In re Dudson's*

real property law is so far modified that A. does not take any technical legal estate or seisin, and the use to C. is not executed but gives C. an interest by way of trust only, then it would seem that C. would have an estate in the nature of an equitable fee simple and a right to the transfer of the statutory fee simple on the register; for the intention being that C. should take the absolute interest and not merely for his life, an interest answering to the equitable fee would pass to him notwithstanding the absence of technical words of inheritance.²

It seems unnecessary to refer specially to leasehold land, or—with one exception—to leases of freehold or leasehold land, in detail. The same principles of construction will apply to instruments creating interests off the register in leasehold land, and in general to leases, as apply in the case of freehold land and interests other than leases. Notwithstanding the special provisions for protection of leases by registered notice in place of restraint on alienation, a lease of registered land stands juridically in the same position with respect to its relation to the registered ownership of the land as any other conveyance. The exception referred to above relates to the questions which may arise with respect to leases of land in mortgage, particularly where the mortgage is created by registered statutory charge. The whole subject of transactions off the register with land in mortgage is involved in some difficulty, and must now be considered.

The difficulty is occasioned by the fact that a mortgagee of registered land—proprietor of a registered charge—does not have vested in him the ownership of the land; whilst in the case of unregistered land a valid mortgage usually requires that the mortgagor's legal estate—his badge of ownership—should be vested in the mortgagee, in the case of registered land the mortgagor remains the owner of the land in form as well as reality, the mortgagee taking only an interest by way of charge. The result is that the juridical position of a mortgagor, and the juridical effect of his executing a conveyance of the land off the register, differ from the position and effect respectively of a mortgagor of unregistered land and his conveyance; the differences here referred to are quite apart and distinct from the difference between conveyances of unregistered land and conveyances off the register of registered land. It will be convenient to take separately the cases of: (1) Conveyance or alienation off the register of the whole of the mortgagor's registered estate or interest, and conveyance or creation of partial freehold interests in the mortgaged land other than leases for life at a rent; (2) Leases of the mortgaged land at a rent for years or for a life or lives, other than leases authorized by s. 18 of the Conveyancing Act,

² *In re Tringham's Trusts*, [1904] 2 Ch. 487; *In re Oliver's Settlement*, [1905] 1 Ch. 191.

1881; (3) Leases authorized by s. 18 of the Conveyancing Act, 1881.

1. For the present purpose the conveyance of a fee simple, and the creation of a freehold estate for life, may be taken as typical transactions; it is intended to exclude all such transactions as fall under the head of leases subject to rent and mutual covenants between lessor and lessee. The case of a conveyance of the whole of the mortgagor's interest where the land is leasehold is included, and need not be separately considered.

A conveyance of a fee simple off the register is, in relation to the registered fee simple which remains vested in the proprietor, in the nature of the conveyance of an equitable estate. This is so whether the land be the subject of a registered charge or not; the existence of the registered charge does not per se make the interest conferred by a conveyance off the register merely equitable. In the case of unregistered land it is the existence of the legal mortgage which, on a conveyance of the equity of redemption, makes the interest conveyed equitable only; such a conveyance does not per se confer a right to have any further or better assurance of the land until the mortgage is redeemed, when a reconveyance of the legal estate may be had from the mortgagee. In the case of registered land the effect of a conveyance in fee off the register may be to confer on the grantee the right to have a formal assurance—by statutory instrument and registration—of the registered estate, or to be placed on the register as proprietor of the land without any statutory instrument being executed. The existence of the registered charge would not interfere with this right, nor would the change in proprietorship of the land derogate from the rights of the mortgagee—the registered proprietor of the charge. A conveyance off the register of mortgaged land thus appears to confer a quasi-ownership or absolute right to have the ownership, and in this respect differs from a conveyance of an equity of redemption in unregistered land.

The conveyance or creation of a freehold estate for life differs altogether in a practical way from a conveyance of the fee, since the grantee would not have the right to be placed on the register as an owner of the land; theoretically, however, the difference is only one of degree, since the right to be placed on the register is inchoate in a sense, and could be made complete and final by the acquisition of the remainder in fee expectant on the determination of the life estate.

Notwithstanding the juridical difference between a legal mortgage of unregistered land and a registered charge on registered land, the practical result—as regards the purchaser or grantee who takes a conveyance of the land off the register—is the same; the rights and

security of the registered proprietor of the charge are not affected by the conveyance off the register, any more than they would be if a statutory disposition of the land were registered. The purchaser or grantee off the register will take subject to the exercise by the mortgagee of all rights and powers with respect to the land which had been conferred on him by the registered charge. Whether the title of the registered proprietor of the land, and of his mortgagee the registered proprietor of the charge, will or will not prevail over the title of a person claiming under a conveyance off the register, depends on the nature of the registered title and the particular interest in the land which may be the subject of the transaction off the register. The extent to which, and the manner in which, questions relating to the technical legal estate might arise, are referred to *ante*, p. 143.

2. One distinction which, for the present purpose, has to be drawn between conveyances of freehold interests off the register and leases at a rent, is that in the case of leases possible questions at once arise directly between the lessee and the mortgagee as to the payment of rent and performance of covenants. Another distinction is that leases are necessarily created off the register, and (unless they exceed twenty-one years, or are for a life or lives) do not confer even an inchoate right to any registered estate. A third distinction is that occupation leases not exceeding twenty-one years are completely valid without any entry at all being made on the register (1875, ss. 18, 50). For the present, however, leases authorized by s. 18 of the Conveyancing Act, 1881 (amongst which an occupation lease for twenty-one years is included), are not under consideration. The question is as to the difference between a lease of mortgaged land under the general law—the mortgagee having the legal estate,—and a lease of registered land which is subject to a registered charge.

Apart from s. 18 of the Conveyancing Act, 1881, a lease of registered land in mortgage will have no greater effect in derogating from the rights of the mortgagee than a similar lease of unregistered land. In each case the mortgagee is, in general, at liberty to disregard the lease altogether and treat the lessee as an intruder, though he may, of course, in each case adopt the lease and make the lessee his own tenant.⁸ It is true that under s. 18 of the 1875 Act all registered land is subject to occupation leases for twenty-one years and less, unless “the contrary is expressed in the register;” it is also true that the mortgagor does not, as he would do in the case of unregistered land, part with his estate or ownership to the mortgagee, and so is not prevented from carving a lease out of, or

⁸ As to leases of unregistered land in mortgage, see Fisher on Mortgages (5th ed.), paras. 892-905.

incumbering, that estate or ownership—though off the register. Perhaps the entry of the registered charge may be considered as one method by which “the contrary is expressed on the register;” but even if this is not so, it seems impossible to construe the Acts as allowing a proprietor of land, who has created a registered charge, to confer on a third person rights which would derogate from the rights of the proprietor of the charge.⁴ Accordingly it seems to be the better opinion that, where s. 18 of the Conveyancing Act, 1881, has no application, the proprietor of a registered charge may exercise all his rights under the charge to the same extent as he could do if these rights were conferred by a legal mortgage of unregistered land.

3. It can hardly be doubted that the provisions of s. 18 of the Conveyancing Act, 1881, do apply to registered land. By s. 2 (vi.) “mortgage includes any charge on any property,” and even an equitable charge on shares has been decided to be a “mortgage” within this definition.⁵ Moreover, in r. 203 the word “incumbrance” appears to be used with express reference to s. 18 (1) of the Conveyancing Act, 1881, and “incumbrance,” as there used, seems to include a registered charge, though elsewhere in the Acts and Rules “incumbrance” and “charge” are distinguished. R. 203 provides that registered notice of a lease is to be effectual against an “incumbrancer,” where it would be binding on him apart from the Land Transfer Acts, notwithstanding prior registration of the “incumbrance;” and if “incumbrance” does here include “registered charge,” a possible source of conflict between the Land Transfer Acts and the Conveyancing Acts has been removed.

Assuming, then, that a registered proprietor of land in mortgage can create—in the words of s. 18 (3) of the Conveyancing Act, 1881—“an agricultural or occupation lease for any term not exceeding 21 years, and a building lease for any term not exceeding 99 years,” which shall be binding on the registered proprietor of the charge, the question of the relation between the lessee and the mortgagee has to be considered.

Under the general law and in the case of unregistered land, the legal reversion is in the mortgagee, and the grant of a lease by the mortgagor operates by virtue of the statutory power conferred by s. 18 of the Conveyancing Act, 1881;⁶ hence it has been held that the mortgagor has no authority or capacity to accept a surrender of the lease.⁷ In the case of registered land, the reversion is in the mortgagor on the creation of the lease, and, as a matter purely of

⁴ In 1875, s. 50, proprietors of incumbrances registered prior to the registration of notice of a lease are expressly excepted from the persons who are to be affected by notice of the lease.

⁵ *Everitt v. Automatic Weighing Machine*

Co., [1892] 3 Ch. 506.

⁶ *Municipal Build. Soc. v. Smith* (1888), 22 Q. B. D. 70.

⁷ *Robbins v. Whyte*, [1906] 1 K. B. 125, the date of the lease being 1892—not 1882.

theoretical conveyancing, there is no estate—reversionary or otherwise—in the mortgagee, and no priority of estate between the mortgagee and the lessee; consequently, there appears to be no technical reason why the mortgagor should not accept a surrender of the lease from the lessee which would be valid against the mortgagee. For practical purposes, however, this statement must be a good deal modified: (1) The mortgagor and the lessee can only deal with each other independently of the mortgagee so long as the latter has not exercised his statutory powers of entry; (2) There is nothing to prevent the mortgagee, on receiving notice of the lease (s. 18 (11) of Conveyancing Act), from giving the lessee formal notice of the registered mortgage-charge.

1. It would seem that s. 10 of the Conveyancing Act, 1881, applies to mortgagors and mortgagees of registered land as well as to mortgagors and mortgagees of unregistered land, so as to enable whichever party to the mortgage may be in possession to occupy the position of the lessee's reversioner; this view is suggested *ante*, p. 121. If the mortgagee did take possession, the right of the lessee to surrender to the mortgagor would at once be at an end. The mortgagee would, in fact, have all the rights and powers of the mortgagor under the lease notwithstanding that he had no actual estate, much as in the case of unregistered land the mortgagor has rights and powers under the lease notwithstanding that he has not the technical reversionary estate—this being vested in the mortgagee.

2. If the decision in *Robbins v. Whyte*^a is sound, considerable risk must be incurred by a lessee who makes no inquiry as to his lessor being a mortgagor; if the decision is not to stand, the risk of a satisfactory lease being surrendered will be incurred by a mortgagee whose mortgagor has not disclosed the fact of the mortgage to his lessee. The practical precaution will have to be taken by the lessee of inquiring whether the land is in mortgage, and by the mortgagee of giving notice of the mortgage to the lessee. These precautions should also be taken with respect to registered land, but the lessee can readily discover by a search at the registry whether a mortgage-charge is on the register at the time of taking the lease. If there were no mortgage-charge registered, and no entry disclosing the fact of the existence of a mortgage off the register, and if the lessee had no notice otherwise of the existence of any mortgage, it is submitted that the lessee would be safe in surrendering to the registered proprietor of the land, notwithstanding the actual existence—unregistered—of a statutory instrument of charge or an ordinary mortgage deed, and probably notwithstanding the subsequent

^a [1906] 1 K. B. 125.

registration of a mortgage-charge without being brought to the lessee's knowledge. If the mortgagor's leasing power were modified or excluded by the registered charge, the lease might not be valid against the mortgagee, who would then have no concern with the surrender; if the mortgage were not registered, the registration of a notice of the lease would seem to make the lease valid as against the mortgagee, whatever the stipulations in the mortgage.

The great distinction between transactions off the register with registered land, so far as persons other than the registered proprietor are concerned, and similar transactions with unregistered land, is that in the case of registered land notice must be given in some way to the registered proprietor, and in most cases the only effectual method of obtaining complete protection is to have an entry of some kind made on the register, which shall either curtail the power of the registered proprietor to deal with the land to the detriment of the unregistered interest, or should fix all persons who propose to purchase from him with notice of the unregistered interest.

The machinery of the system with respect to restrictive entries on the register is, however, directed only to preventing improper dealings by the registered proprietor, and there appears to be no means by which a purchaser of an interest already protected, by caution or otherwise, can obtain protection for himself by an entry in the register as against his immediate vendor. Possession of all documents of title, together with notice to the registered proprietor, appears to be the only safeguard against the vendor assuming to confer an interest in the property on another person in derogation of the purchaser's rights.

With respect to the effect of notice to the registered proprietor that a sub-interest had been created in an unregistered interest, which was itself sufficiently protected on the register, the rule in *Dearle v. Hall*,⁹ by which priority in interest would be gained by priority in giving notice, might possibly apply if the land could be held to be converted into personalty—either a chose in action or a money fund—as under a trust for sale; but under ordinary circumstances the general rule would prevail as to interests in land, whether legal or equitable, i.e. that priority of creation would give priority in interest.¹⁰

⁹ (1828), 3 Russ. 1, 27 R. R. 1.

¹⁰ See *Hopkins v. Hemsworth*, [1898] 2 Ch. 347. This is illustrated, with

respect to transactions off the register with registered land, by an Australian case: *In re Rutter* (1888), 3 Q. L. J. 105.

CHAPTER V.

REGISTERED DISPOSITIONS IN INVITUM.

THE scheme of the Acts and Rules provides two methods of effecting changes in the registered proprietorship of land and charges. One method is by registering a successor in title, or new proprietor, on the faith of a statutory instrument executed by the proprietor for the time being; the other method is by registering a successor or new proprietor upon production of evidence that the title of the *de facto* proprietor to be on the register either never existed or has come to an end, and that another person is entitled to be registered in his stead. One method may be called disposition by registered instrument, and forms the subject of sec. 2 in the preceding chapter; the other method may be called rectification of the register, and will be partly dealt with in Chapter VII.—principally with respect to mistakes in the register. The changes in the registered proprietorship of land or charges, to be considered in this chapter, are changes during the lifetime of the proprietor otherwise than through the medium of a statutory instrument executed by him, and constitute special instances of rectification of the register made necessary by the title of the existing proprietor to be on the register having come to an end.

The likenesses and differences between the two methods of change in registered proprietorship throw some light on the scheme of the system. In both cases the change is effected by what may, in one sense, be called rectification of the register, for it is the alteration of the register which effects the change in the proprietorship. In both cases the person who is entitled to be placed on the register as the new proprietor, has not the statutory “estate” conferred by the Acts until he is actually on the register, but has only a “right” to be registered. The value of this “right,” however, is not the same, either theoretically or practically, in the two cases. In the case of a disposition by statutory instrument, the person taking under the instrument does not appear to have any complete statutory right of property conferred upon him by the mere execution of the instrument. In the case of a disposition by rectification of the register, the occurrence of the event which “entitles”

the donee to be registered, in place of the existing proprietor, does seem to confer a statutory right of property more or less complete, according to circumstances; the limits of variation in the completeness of this right of property are illustrated by the cases of bankruptcy trustees, and persons acquiring land compulsorily under a railway Act. In cases of this kind the title of the existing proprietor comes to an end more distinctly than in a case of disposition by statutory instrument.

Where the title of the existing proprietor has thus come to an end, but no entry appears on the register to indicate this, the *de facto* registered proprietor may still be able to confer a good title on a purchaser who gets himself placed on the register before the registration of any disposition in favour of the person properly entitled to be registered as proprietor, or the entry of any caution or other restriction. Serious difficulty may thus arise in determining the conflicting rights of the registered purchaser, and the person properly entitled to be registered as proprietor in place of the purchaser's transferor. Each may have a complete statutory title to the land, and the question may then be, which of the two is entitled to keep the land and which is entitled to indemnity for the loss of it? The exact shape which these difficulties take will vary with the circumstances of the case and its proper classification.

Registered dispositions in invitum may be divided into: (1) Dispositions by virtue of express provisions in the Acts or Rules; (2) Dispositions for giving effect to rights which are conferred otherwise than by the Acts or Rules.

1. Express provision is made by the Acts and Rules themselves for registering dispositions in invitum of the proprietor in four cases: (i.) Under a power of sale contained in a registered charge or incumbrance; (ii.) Under a foreclosure order absolute; (iii.) On the bankruptcy, etc., of the registered proprietor; (iv.) On the marriage of a female registered proprietor.

i. By s. 27 of the 1875 Act, the registered proprietor of a charge with power of sale may transfer the land "in the same manner as if he were the registered proprietor of such land," and by rr. 175-177 the same right is conferred on the registered proprietor of an incumbrance, whilst by rr. 178 and 179 a charge may in like manner be transferred by the registered proprietor of a sub-charge. Since the proprietor of the charge, etc., will have to execute a statutory instrument of transfer of the land, etc.—a form being provided in the Rules (f. 34)—changes in the proprietorship thus effected have a close resemblance to ordinary dispositions by execution and registration of statutory instruments; but they seem to be more properly classed under "rectification"—in the wide sense. The broad

distinction between the two methods of effecting changes in the proprietorship on the register is that in one case it is the registered proprietor who executes a statutory instrument, and in the other case it is another person who does so. The juridical operation of the registration of a purchaser from the mortgagee, on the faith of a statutory instrument of transfer framed on Form 34, differs entirely from the operation of an ordinary deed of conveyance from a mortgagee of unregistered land who has the legal estate or legal ownership. The subject of transfer to a purchaser is referred to *ante*, p. 185.

In the event of the registered proprietor of the land ceasing to have any disposing power over it, by reason of the mortgagee having exercised his powers of sale—though the purchaser be not yet registered, it is not probable that any purchaser from the mortgagor would be registered in ignorance of the actual state of facts; the mortgage-charge being registered, an intending purchaser from the mortgagor would in the ordinary course of things learn from the mortgagee that the power of sale had been exercised, and in any case—if he did purchase—would usually so far stand in the shoes of the mortgagor as to have no right of action against the mortgagee. But however improbable in practice, it is certainly quite possible that a registered transferee of the land from the mortgagor—the land subject to the registered mortgage-charge—might find his title contested by a registered transferee of the land from the mortgagee—the land freed from the mortgage-charge. Under ordinary circumstances it can hardly be doubted that the title of the latter—the transferee from the mortgagee—would prevail, and it might depend on questions of fact whether the transferee from the mortgagor had done, or omitted to do, anything to debar himself from claiming indemnity.

ii. A disposition of land in favour of the mortgagee in consequence of foreclosure¹ resembles the disposition made on sale by the mortgagee to a purchaser, above referred to. The order itself—until it has been produced at the registry, and the mortgagee has been registered as proprietor of the land—seems to vest no absolute statutory right to the land in the foreclosing mortgagee, but operates only as a duly executed instrument of transfer would operate. But just as a transfer by the mortgagee under his power of sale would override any transfer of the land by the mortgagor, so it would seem that the registration of a foreclosure order would vest the land completely in the mortgagee notwithstanding any registration of a purchaser under a transfer by the mortgagor; the mortgagor's purchaser might, of course, have a claim for indemnity against the Insurance Fund.

¹ 1875, s. 26; 1903, r. 164.

iii. The involuntary alienation of land through bankruptcy or liquidation by arrangement is classed by the Acts and Rules as "transmission,"² and is distinguished from "transfer," but the words "transmit" or "transmission" are not generally used in the Acts or Rules.³ In s. 9 (6) of the 1897 Act, the right to be registered on bankruptcy of the proprietor is spoken of as having "devolved" on the trustee, etc., in contrast to having been "conferred" by an instrument of transfer, etc. The scheme is that on production of an office copy of the order of adjudication, etc., and a certificate that the registered land or charge in question is part of property of the bankrupt which is divisible among his creditors, the official receiver or trustee shall be registered as proprietor of the land or charge.⁴ Until the trustee, etc., is registered, the bankrupt can confer a good title on a bona fide purchaser duly registered. When registered, the trustee, etc., is in the same position as a transferee without valuable consideration; he holds subject to existing equities, but can confer a good title on a duly registered purchaser, notwithstanding that he is described on the register as trustee, etc.⁵ Changes in the trusteeship may be completed by the actual trustee being registered as proprietor on production of an office copy of the certificate of his appointment, and notice of the property being divested may be registered and the necessary alterations made in the register.⁶

By r. 200 provision is made for registering an order or resolution by which the liquidator of a company is appointed.

On general principles a trustee in bankruptcy cannot be considered as a purchaser for value, and this view is confirmed with respect to registered land by s. 46,⁷ which expressly provides that unregistered rights are not to be ousted by the mere registration of the trustee. But this provision does not completely determine the nature of the trustee's title as against a purchaser from the bankrupt, where the purchaser's rights had no existence prior to the adjudication, but purported to be created by the bankrupt after the trustee's right to be registered had accrued. The enactment (s. 43) which gives the trustee a right to be registered differs in its language from the enactment (s. 29) which gives an ordinary purchaser a right to be registered; under the latter the vendor remains proprietor of the land until the purchaser is registered, but nothing of the kind is said

² See headings to 1875, ss. 41-48, and 1903, rr. 183-200.

³ "Transmit" does not seem to occur at all. "Transmission" seems to occur only in the heading prefixed to 1875, s. 41, the heading prefixed to 1903, r. 183, and in 1897, ss. 8 (1), 13 (1), and 1903, rr. 216, 316.

⁴ 1875, s. 43, as amended; 1903, rr. 193-198.

⁵ 1875, s. 46 (with which cf. s. 33); 1903, r. 196.

⁶ 1903, rr. 151, 198, 199, f. 53.

⁷ Under the Australian system it has been held that the trustee in bankruptcy is only a volunteer as regards his title from the bankrupt: see Hogg's Aust. Torrens Syst. 993.

with respect to a bankrupt proprietor. On the other hand, s. 9 (6) of the 1897 Act seems to place on the same footing the right of a purchaser, and of a bankruptcy trustee, to be registered. There seems to be some ground for the view that it is intended, by s. 43, to give to the trustee a statutory title to the land, so that if by virtue of other provisions of the Acts a registered purchaser from the bankrupt also acquired a statutory title through actual registration, the trustee would have a good claim either to have the register rectified, or to be indemnified for loss, under s. 7 of the 1897 Act.

iv. Changes in ownership of land caused by the marriage of the owner, when a woman, are also classed under the head of "transmission," but these provisions of the 1875 Act apply only to cases of marriage prior to 1883, and even then only to property which is not separate property.⁸ Except in these two cases, the effect of the amendment made by the 1897 Act appears to be that the rights of the husband in his wife's property are wholly excluded, and the necessity for the wife's acknowledgment and separate examination completely abrogated, even when this would not have been the case had the land been unregistered.⁹ Where the husband's rights do exist, he may be registered as "co-proprietor" with his wife of her freehold land, and must be described on the register as "co-proprietor in right of his wife;" on her death leaving the husband entitled as tenant by the curtesy, some other person may be registered as "co-proprietor" with the husband, thus effecting the same result as is effected by a restriction on alienation being entered on the register when the husband is registered as sole proprietor.¹⁰ When the wife's property consisted of leasehold land or a charge, the husband would be entitled to be registered as sole proprietor.

The observations made above, as to the possibility of a statutory title being conferred by the fact of bankruptcy, will apply to the case of marriage, where the property is not the wife's separate property.

2. The principle of effecting changes in proprietorship of registered interests by actual alteration of the register only, in lieu of the mere execution of instruments, is well illustrated by r. 151; this treats interests conferred by (a) statute or statutory power, (b) order of Court, (c) paramount title, as *rights* only—though these would be actual estates in the case of unregistered land—and provides for dispositions of the property being carried out so as to give effect to these rights. On it being shown that a transfer from the

⁸ 1875, ss. 44, 45, 83 (4), as amended.

⁹ See *In re Harkness and Allsopp's Cont.*, [1896] 2 Ch. 358.

¹⁰ 1897, s. 6 (1, 10); Settled Land Act, 1884, s. 9. And see 1875, s. 52 (*ante*, p. 128),

as to registering notice of an estate by the curtesy, which of course would only be necessary where the husband was not registered as "co-proprietor."

existing proprietor, by means of the execution and registration of a statutory instrument, cannot be obtained, the registrar is empowered to make the alteration or rectification of the register which is necessary to effect the required disposition and place the proper person on the register as proprietor; by r. 152 production of the land certificate may be dispensed with where the disposition is one in virtue of a right not affected by the registration.

These provisions seem to be defective on two points. In the first place, production of the land certificate is dispensed with in only one of the three cases in which the register may be rectified—*i.e.* paramount title—though the difficulty of producing it may be equally great in the other two cases. In the next place, although r. 151 applies to registered charges as well as land (r. 174), r. 152 applies to land and land certificates only, so that production of the certificate of charge or incumbrance has not been dispensed with at all.

The classification of cases, above-mentioned as contained in r. 151 in which the power of disposing of registered land has become vested in some person other than the registered proprietor, appears to be exhaustive; the meaning is made clearer by an instance of each case being given.

a. One instance given of the operation of a statute or statutory power is the execution of a deed poll under s. 77 of the Lands Clauses Consolidation Act, 1845, by which the right to possession of the land is vested in the promoters of the authorized undertaking, whilst the right of the owner of the land is turned into a right to receive the amount of money paid by way of compensation. The deed poll would, so far as registration of the promoters was concerned, have the same efficacy as an instrument of transfer in the prescribed form. It would, however, have greater efficacy than a statutory instrument of transfer executed by the registered proprietor, for it would confer an absolute right to be registered which could be enforced against any one who got on the register, even by way of purchase from the registered proprietor. In the event of the registered proprietor transferring to a purchaser who became duly registered, the latter might also have a perfect statutory title under the Land Transfer Acts, but the register would necessarily have to be rectified in favour of the promoters who executed the deed poll, and the purchaser who was removed from the register would then be entitled to indemnity under s. 7 of the 1897 Act.

The vesting of land in new trustees by virtue of a declaration made under s. 12 of the Trustee Act, 1893, is another instance of the powers of disposition becoming vested in another person by virtue of a statute.

Other instances would be where the land has become liable to be sold, mortgaged, or leased, for the purpose of realizing money charged upon it by some statute, either in favour of a private creditor such as a judgment creditor, or in favour of some public authority such as a borough or county council or board with statutory powers of rating.

b. The instance of a power of disposition becoming vested in another person by "a declaration vesting an estate contained in or made under or by virtue of any statute," includes an ordinary vesting order made by the Court, such as are made under the Trustee Acts. It appears to be implied by r. 151 that the right conferred by an order of Court is as absolute as the other statutory rights already referred to, and illustrated by reference to the Lands Clauses Consolidation Act, 1845. With respect to this, it was suggested above that, in case the title to the same piece of land was the subject of equally valid, but mutually exclusive, statutory rights, the land would probably be given to the promoters who had the power of acquiring it compulsorily, whilst the purchaser from the former registered proprietor would receive the indemnity. The possession of the land would not be of such vital importance to the person claiming under a vesting order, and under some circumstances the purchaser from the registered proprietor might be allowed to keep the land and leave the claimant under the vesting order to be recompensed by the indemnity.

c. The power of disposing of the land "by paramount title" is illustrated in r. 151 by the case "of a sale by a mortgagee with a title paramount to the title registered." In order to be "paramount" the mortgage must, of course, have been either registered or else excepted—expressly or impliedly—from the registration. If the mortgage is registered under r. 175, the question which would arise seems to be identical with those already mentioned as likely to arise on a sale of the land by the proprietor of a registered mortgage-charge (*ante*, p. 119), and it is difficult to see how r. 151 would apply to such a case; under rr. 176 and 177 the mortgagee could execute a statutory instrument of transfer just as though the mortgage were a statutory mortgage-charge. If not actually registered, but merely noted as an incumbrance, or otherwise excepted from registration, the title of the owner of the mortgage would have to be proved in the ordinary way, and could not be taken for granted—as would be the case practically with a statutory right. In most cases, however, the title of the mortgagee would be the title of the registered proprietor of the land, and the latter would, as against himself, have admitted the mortgagee's title.¹¹

¹¹ See *In re Winter* (1873), L. R. 15 Eq. 156.

The rule does not seem to contemplate as "paramount" interests which are not excepted from the registration, notwithstanding that they might justify any proceedings being taken for rectifying the register. Other instances of "paramount" interests would be interests outstanding at the time of registration with possessory title, and interests expressly excepted from the registration, either by entry on the register, or as included in the enumeration contained in s. 18 of the 1875 Act.

Where the "paramount" interest is not a mortgage registered under r. 175, but merely an interest excepted from the registration, the position of the owner of the interest seems to be quite different from the position of an owner of a statutory right—whether conferred directly by some statutory provision, or by an order of Court. The owner of this statutory right is safe—according to the view here taken—notwithstanding any registered disposition by the proprietor on the register; the registered purchaser from the proprietor on the register is also safe notwithstanding the existence of the other statutory right. But the owner of a paramount interest has no statutory title to his property, though he also may be able to obtain indemnity if he be wrongfully deprived of it through the operation of the registration provisions of the Land Transfer Acts; on the other hand, the purchaser from the registered proprietor necessarily takes the land subject to any rights which may then be vested in the owner of the incumbrance noted on the register, or in the owners of any rights which are not bound by the registration. It would thus seem that nothing short of fraud, or of some mistake in the registry office, could result in a statutory title being conferred on the owner of the paramount interest, and on the purchaser from the registered proprietor, in respect of the same land.

CHAPTER VI.

SUCCESSION ON DEATH OF REGISTERED PROPRIETOR.

THE Acts do not expressly say that until a successor is registered the estate of a deceased registered proprietor does not vest in the successor, but this appears to be distinctly implied. The successor is spoken of as being "entitled" to be registered, and as having a "right" to be registered which has "devolved" upon him;¹ he is nowhere said to have any "estate," before registration, in the land of his predecessor.

In Part I. of the 1897 Act—relating to land in general, and only incidentally referring to registered land—the land itself is spoken of as devolving on, and becoming vested in, the executor or administrator; in Part II.—relating to registered land only—it is the right to be registered which is spoken of as devolving by reason of the death of the proprietor.²

On transfer *inter vivos*, the registered estate of the transferor does not vest in the transferee until the latter is registered.³ On a disposition *in invitum* being made in the lifetime of the registered proprietor, his registered estate does not vest in the donee until the latter is registered.⁴ In conformity with these two methods of disposition, under the third method of disposition—succession on death of the registered proprietor—the successor does not take the registered or statutory "estate" of the deceased proprietor until he is himself registered, but takes only a "right" to be registered. In the case of dispositions *inter vivos*, one question is: What is the nature of the right of the donee before his registration, the registered estate remaining in the donor until the registration of the new proprietor? In the case of the death of the registered proprietor, there are two questions: (1) What is the nature of the right of the successor before his registration? (2) What becomes of the registered estate pending the registration of the successor?

1. The distinction drawn in the 1897 Act itself, as pointed out above, between unregistered land, and only the right to be regis-

¹ See 1875, ss. 41, 42, 47; 1897, ss. 6 (5), 9 (6). Chap. IV., *ante*.

² 1897, ss. 1 (1), 9 (6).

³ 1875, ss. 29, 30, 34, 35. And see

⁴ 1875, ss. 43-45; 1903, r. 151. And see Chap. V., *ante*.

tered as proprietor of registered land, vesting in a successor on the death of an owner, appears to answer—confirming the views expressed in Chapter III.—to the distinction between the technical legal estate in unregistered land and the technical legal estate in registered land, *i.e.* that this legal estate, from being itself the badge of ownership in the one case, is in the other case turned into a right to be registered or to have the ownership.

The right of a successor to be registered as proprietor is not always, however, an absolute right vested in him immediately on the death of the proprietor; this right may at first be inchoate, only becoming complete upon his being fully constituted personal representative by formal grant of probate or letters of administration.⁵ When once fully clothed with the powers of a representative, or otherwise completely entitled to be registered as proprietor,⁶ the right of the successor to be registered is as complete a right of property as a right to be registered in pursuance of a vesting order or other authority conferred by statute, or any other right which is not prevented from being consummated by the existing state of the register. The successor's right to be registered will thus, like other complete but unregistered rights of property in registered land, entitle him either to rectification of the register or to indemnity—either to the land or its value.

2. The question, raised by the necessary occurrence of an interval of time between the death of a proprietor and the registration of his successor, resembles the question raised, with respect to unregistered land, by the enactments which vest realty in the personal representatives in lieu of the heir or devisee.⁷ These enactments leave it doubtful whether, in the interval between the death of an owner of land without appointing an executor—though probably not where he does appoint an executor⁸—and a personal representative being duly constituted by the Court, the land is vested in the heir or devisee; if not so vested, it could of course vest in no one else. What judicial opinion or authority there is, is certainly in favour of the heir or devisee taking the legal estate until this vests in a personal representative.⁹ This view is, of course, based on the necessity, real or supposed, for adhering to the feudal rule according

⁵ 1903, rr. 183, 185.

⁶ See 1903, rr. 186, 187, 190, 192, 198.

⁷ Conv. Act, 1881, s. 30; Land Transfer Act, 1897, s. 1.

⁸ See *In re Pawley and London, etc., Bank*, [1900] 1 Ch. 58.

⁹ *John v. John*, [1898] 2 Ch. at 576; and see *In re Pilling's Trusts* (1884), 26 Ch. D. 432; *In re Williams' Trusts* (1887), 36 Ch. D. 231. An Australian decision to the same effect is *Foley v. Egan* (1891),

17 V. L. R. 340; other Australian cases are cited in Hogg's Aust. Torrens Syst., 1011. All these Australian cases relate to unregistered land; but with respect to registered land—under the Torrens system—it has been said that the “descent” to the heir, before the change in the general law of succession on death, was “ineffectual except as a warrant to register”: *Lange v. Ruwoldt* (1872), 6 S. A. R. at 78.

to which the freehold was, if possible, never to be in abeyance ; under this rule, on the death of an owner of the legal estate in freehold land, the legal estate vests *eo instanti* in the heir or devisee. It is submitted that there is some ground for considering this feudal rule, in its extreme form, to have been implicitly abrogated by the enactments which altered the devolution of realty. It is further submitted that the rule, in its extreme form, has certainly been abrogated with respect to registered land.

Since, according to the view already expressed on the subject, the technical legal estate is extinguished in the registered estate, there can be no question as to the legal estate in registered land on the death of a registered proprietor ; the only question will be, what becomes of the registered estate upon the death of the proprietor ? Since the registered estate is statutory, the question of its devolution on death need not be governed by all the rules of the common law which are derived from the principles of feudal tenure, and it seems possible to arrive at a satisfactory conclusion without necessarily solving the question as to the devolution of the legal estate in unregistered land. The latter question need not be further discussed here, but it is submitted that its solution will probably be found to be analogous to the solution, to be here offered, of the question relating to the registered estate in registered land.

Since the person who is ultimately to be registered as proprietor, in succession to the deceased proprietor, has, until he is so registered, a right only and not the complete estate or proprietorship, and since this complete estate or proprietorship cannot, consistently with the express language of the Acts and Rules, be vested in any one who is not on the register as proprietor of the estate, a logical result would be that the registered estate should be vested in no one—or, in other words, that it should be in abeyance. That the feudal rule which forbids the freehold to be in abeyance can be relaxed, in cases of absolute necessity, is shown by the case of a corporation sole. On the death of the person who for the time being has, as a corporation sole, vested in him the entire fee simple, the fee is in abeyance until, by the appointment of a successor, it again has an owner, and vests in that successor.¹⁰ Scottish law affords a still more striking illustration of the feudal rule yielding to necessity ; but, instead of merely admitting of an isolated exception—as in the case of the English corporation sole, the feudal rule has itself become modified, and in Scottish law the expression “in abeyance,” or “in pendente,” has a meaning which differs widely from its meaning in English law. The term “*hereditas jacens*” is only applied to land, in English

¹⁰ See Challis, *Real Prop.* (2nd ed.), “which inheritances put in abeyance are 91 ; Co Lit. 342b, where it is said : by some called *hereditates jacentes*.”

law, to indicate that the freehold is in abeyance,¹¹ and not yet vested in a successor; in Scottish law, where land is an *hereditas jacens* as not being vested in a successor, the fee is not necessarily in abeyance, but is only said to be in abeyance when there is no person in existence in whom it can become vested.¹² Before land in Scotland can be completely vested in a successor to a deceased proprietor, the successor must be "entered" with the feudal superior—in effect, he must be registered as proprietor by right of succession; meanwhile, there being in existence a person entitled to be so "entered" or registered as successor, the fee is not considered to be in abeyance. Copyhold land in England also affords an illustration of the successor's estate not being completely vested in him until the formality of admittance by the lord—much the same thing as "entry" with a feudal superior, or registration—has taken place.

It is submitted that, in the sense in which the word is used in English law, the fee simple of a registered proprietor must, on his death and until registration of a successor, be said to be in "abeyance."

There seems to be no reason, on principle, why the only alternative view which is possible should be adopted—*i.e.* that until the registration of a successor the fee vests (1) in the heir when no executor is appointed, (2) in the executor when an executor is appointed. The heir will take by transfer from the executor or administrator in case of an intestacy, and registration of the executor as proprietor will be meaningless if he is already fully clothed with the estate of the deceased proprietor. The successor will not lose his property by its being considered to be in abeyance pending his registration, and there is thus no practical gain in considering that the land vests temporarily in the heir or executor. The logical difficulty of supposing such a temporary vesting is quite as great as that of supposing that there is no temporary vesting of the land in any one; neither heir *quâ* heir, nor executor *quâ* executor, would have any immediate right to be registered, for, in the absence of some special successor being entitled, the executor who has proved the will, or the administrator, would be the person entitled to be registered as successor, and on the proving executor or administrator being registered, any estate in the heir, or in a purchaser from him, would at once be divested.¹³

No particular form of application to be registered in succession to a deceased proprietor is prescribed; an application in writing

¹¹ See preceding note.

¹² Bell, *Principles of the Law of Scotland* (8th ed.), para. 1711.

¹³ See *In re Pryse*, [1904] P. 301. It has been held in Australia that, on the

appointment of a personal representative, any conveyance already made by the heir is avoided: *Slack v. Winder* (1874), 4 A. J. R. 188 (Victoria).

should be made, framed on the forms prescribed for applications for first registration (1903, ff. 1 or 3), and the evidence in support of the application will, of course, vary according to the nature of the deceased proprietor's interest, and the character of the successor. Whether the property be land or charges, an inquiry will, in every case apparently, be made by the registrar as to succession and estate duty.¹⁴

The provisions of the 1875 Act, with respect to the registration of a successor to a deceased proprietor, are inadequate—especially in view of the alterations in the law effected by the 1897 Act, and have been considerably supplemented by the 1903 Rules.¹⁵ The Acts and Rules do not enumerate exhaustively the different persons who may claim to be registered as the successors of a deceased proprietor, according to the nature of his registered interest in the property; the scheme of the system is that the person who, by the rules of the general law, is entitled to the property—and who, but for the registration provisions of the Acts, would take it directly and at once become the complete owner of it—should make an application more or less formal and be placed on the register as proprietor. The Acts and Rules usually speak of “land and charges,” and it will not be necessary to treat separately of each, for the most part. Persons entitled to be registered as successors to a deceased proprietor may be divided, according to the nature of the interest held by the deceased proprietor, into seven classes:

1. The executor or administrator, or the person taking directly from the executor or administrator, where the property was vested in the proprietor beneficially.
2. The next successor to the benefice, where the proprietor was an ecclesiastical corporation sole.
3. The person entitled in remainder, or otherwise, under a settlement, where the proprietor was tenant for life of settled land.
4. The executor or administrator, where the proprietor was a sole trustee.
5. The official receiver, or new trustee in bankruptcy, where the proprietor was a trustee in bankruptcy.
6. The successor in office, where the proprietor was a statutory corporation sole, or a quasi-public trustee.
7. The survivor or survivors, where the deceased proprietor was one of two or more co-proprietors—not being tenants in common.

1. It was enacted by s. 42 of the 1875 Act that the executor or administrator should be entitled to be registered as proprietor of

¹⁴ 1875, ss. 18 (as amended), 83 (8); 1897, s. 13.

¹⁵ 1875, ss. 41, 42; 1897, ss. 1-4, 6 (4, 5); 1903, rr. 183-192.

leasehold land or charges vested in a deceased proprietor, whilst by s. 41 the person to be registered as proprietor of the freehold land of the deceased was to be the person who appeared to be best entitled to be so registered—*i.e.* who would have been entitled to the land under the general law irrespectively of the registration provisions of the 1875 Act. Now that under ss. 1-4 of the 1897 Act—which applies to all land other than copyhold, and not registered land only, and is part of the general law relating to land—the executor or administrator, and not the heir or devisee, is made the successor in whom freehold land vests on the death of the owner, like a chattel real, the executor or administrator will be the person best entitled to be registered; this would be so even under the provisions of s. 41, and express provision to the same effect is made by r. 183. Under this rule, on production of the probate or letters of administration the executor or administrator “named in such probate or letters” will be registered as successor, and, of course, if the probate or letters of administration have been granted to more than one, they will be registered as co-proprietors. Since it is the executor or administrator “named in” the probate, etc., who is entitled to be registered, no executor who has not proved the will need be registered as a co-proprietor, but he may be so registered if he either obtains probate, or accepts the executorship and applies to be registered.¹⁶

It is also provided by r. 183 that the executor or administrator is to be registered as proprietor with the addition of the words “executor” or “administrator,” etc. This really carries out the provision of s. 46 of the 1875 Act, which directs that the registered successor to a deceased proprietor shall hold the land on the trusts to which it may be subject, as any other proprietor would do who takes by a voluntary disposition.

The executor or administrator may, instead of being registered as successor, allow the person beneficially interested, and to whom the land would eventually have to be transferred, to be registered directly in succession to the deceased proprietor. The person so registered will be either (a) a devisee, (b) a legatee or person entitled to a share of residue under a will, (c) a person entitled under an intestacy, or (d) a purchaser from the executor or administrator; the registration of the person so entitled can be effected on production at the registry of the probate or letters of administration, together with either an instrument of transfer or (in the first

¹⁶ 1903, r. 184. This avoids the difficulty which arose, with respect to unregistered land, in *In re Pawley and London, etc., Bank*, [1900] 1 Ch. 58, where it was held that a good title could only be

conferred on a purchaser by all the executors, and not merely those who had proved, concurring in the conveyance.

three cases) an instrument of appropriation in the prescribed form.¹⁷ An instrument of assent, though having the effect of an instrument of transfer, will not be liable to stamp duty as a transfer of the land.¹⁸ On the same principle, it would seem that an instrument of appropriation would also be free of stamp duty.

The statutory power to convey conferred, by s. 4 of the Conveyancing Act, 1881, on the executor or administrator, where there is a contract enforceable against the heir or devisee, but the deceased owner is not actually a trustee of the land, is rendered unnecessary by the estate actually vesting in the executor or administrator.

Special provision is made for an order of the Court being made for the registration of the person entitled to the land, if on the expiration of a year from the death of the proprietor it has not been vested in him by the executor or administrator.¹⁹

The case of a settlement being created by will, or otherwise arising on the death of the proprietor, is specially provided for; in this case the executor or administrator—though not expressly forbidden to be registered, and though registration of the person beneficially entitled might be effected under s. 9 (6) of the 1897 Act and r. 185—is directed to apply for the registration of the person entitled to be registered as proprietor, and for the entry of the proper restrictions on the register.²⁰ The mention of the probate and letters of administration in r. 186 indicates that it is contemplated that the executor, etc., is not himself to be first registered, but is to apply for the registration, as direct successor, of some person beneficially entitled; this person would ordinarily be the tenant for life under the settlement.

2. Nothing is said in the Acts or Rules as to registration of a successor to an ecclesiastical corporation sole. The successor in the benefice, when appointed, would be entitled to be registered as proprietor of the land, according to the principles laid down in s. 41. The case is analogous to that of the deceased proprietor being a trustee in bankruptcy, for which, however, express provision is made.

3. Where the land is settled land, and the deceased proprietor was tenant for life only under the settlement, his executor or administrator has no right to be registered as successor, but the trustees (if any) of the settlement are the proper persons to apply for the registration of the person entitled as successor; if they do not apply, or if there are no trustees, an application to register a proprietor may be made by any one interested under the settle-

¹⁷ 1897, ss. 3 (4), 4 (3), 9 (6); 1903, r. 185, ff. 51, 52. *missioners*, [1905] 1 K. B. 581.

¹⁹ 1897, s. 3 (2).

¹⁸ *Kemp v. Inland Revenue Com-*

²⁰ 1897, s. 6 (5); 1903, r. 186.

ment, and the registration will be effected as in the case of an application for first registration.²¹ The register will usually show on its face that the proprietor was tenant for life only, and the registrar is by rr. 187-189 empowered to require evidence by statutory declaration, and either a certificate of counsel or production of the settlement itself—which, however, will often have already been filed, that the person claiming to be successor is entitled. In the somewhat improbable event of no restriction having been entered on the register, and the executor or administrator, or some other person by their direction, being registered as successor, the claim of the person rightfully entitled could be enforced by rectification of the register so long as the land had not reached the hands of a purchaser for value; a purchaser for value, duly registered, could resist rectification, and the person entitled by way of remainder would, probably, by having omitted to enter a restriction, have lost any claim for indemnity which he might otherwise have had.²²

4. Where the deceased proprietor was a sole trustee—other than a tenant for life of settled land—the executor or administrator is entitled to be registered as successor, whether the fact of the existence of a trust appeared on the face of the register or not; if the trust did not appear, the title of the executor or administrator to be registered would rest on the provisions of Part I. of the 1897 Act—altering the general law as to the devolution of land, whilst if the trust did appear, their title would rest on the provisions of s. 30 of the Conveyancing Act, 1881.

5. Where the deceased proprietor was a trustee in bankruptcy or official receiver, the executor or administrator is not entitled to be registered as successor, but the official receiver or a new trustee in bankruptcy (as the case may be) is the successor entitled to be registered.²³ There will be the same kind of temporary hiatus in the registered proprietorship—or abeyance of the fee—as in the case of an ecclesiastical corporation sole.

6. Where the deceased proprietor was a statutory corporation sole, such as the official trustee of charity land, or other quasi-public trustee, the successor entitled to be registered will be the successor in the office, as in the case of an ecclesiastical corporation sole or trustee in bankruptcy. This case is not specifically provided for in the Acts or Rules, but is governed by the general principle enunciated in s. 41.

7. Where the deceased proprietor was one of two or more proprietors having the *jus accrescendi*, no new successor or successors will be registered, but on proof of the death the name of the

²¹ 1897, s. 6 (1, 2, 4); 1903, rr. 80, 187-190.

²² 1875, s. 46; 1897, s. 7 (9).
²³ 1903, rr. 192, 196, 198.

deceased proprietor will be withdrawn from the register, and the survivor or survivors will then ipso facto be the sole proprietor or only co-proprietors, as the case may be.²⁴ The effect of the number of proprietors being reduced—even in the absence of a “no survivorship” clause—may be that the land cannot be dealt with without the order of the Court or the registrar.²⁵

²⁴ 1903, r. 191.

²⁵ 1875, s. 83 (3) (as amended by 1897, sched. 1); 1903, rr. 224, 225.

CHAPTER VII.

REMEDIES FOR IMPROPER ENTRIES ON, OR OMISSIONS FROM, THE REGISTER.

SEC. 1.—Rectification of the register.

SEC. 2.—Indemnity for loss.

SEC. 3.—Other remedies.

SECTION 1.—RECTIFICATION OF THE REGISTER.

IN a wide sense rectification of the register includes all changes in the registered proprietorship which are effected otherwise than on the faith of a statutory instrument of transfer or charge executed by the existing registered proprietor. Some of these changes properly fall under the head of registered dispositions, where the register is "rectified," not by reason of any mistake having been made, but in order to place on the register a successor in title; these have been dealt with in Chapters V. and VI., and are not intended to be specially referred to here.

The Acts and Rules provide for the register being rectified under the following circumstances: (1) Where a judicial decision has been given that some person is entitled to an interest in registered land, and a judicial opinion expressed that rectification is required; (2) Where some person claims that an entry on the register should have been made or omitted, and a substantive application is made to the Court accordingly; (3) Where entries on the register are clearly erroneous, and the registrar has authority to correct them.

Although "corrections" or "entries" made by the registrar in the first instance, or after appeal to the Court from his decision, are not referred to in the Acts and Rules as "rectification," yet such corrections, etc., only differ from rectification so called in degree. Where the alterations are trifling and the right of the person in whose interest they are made is clear, they are called "corrections" of the register; where the alteration is only made as the result of its being found, after an inquiry in the nature of a judicial investigation, that the rights purporting to be conferred by the existing entries on the register are conferred on the wrong person, or in

respect of the wrong property, such an alteration is usually called "rectification." The process of rectifying the register, the power of the Court to direct it, and the authority of the registrar to carry it out, are necessary corollaries to any system of warranty of title such as is set up by the Land Transfer Acts, and rectification is really nothing more than the alteration of the register—within the limits allowed—so as to accord as far as possible with existing rights as these are recognized by law, where the other specific methods—transfer, charge, transmission, vesting order, etc., prescribed for effecting alteration in the register under certain definite circumstances, cannot be availed of for the time being.¹ The three cases above-mentioned will now be dealt with in order.

1. The 1875 Act provides that, "subject to any estates or rights acquired by registration," any Court of competent jurisdiction—after deciding that "any person is entitled to any estate, right, or interest in or to any registered land or charge," and being of opinion that "rectification of the register is required"—may direct the register to be rectified, and the registrar must obey the order on being served with it.²

Now the scheme of the system is such that the register is not always—consistently with the express provisions of the Acts—"capable of rectification," and this is recognized in s. 95 by the words "subject to any . . . rights acquired by registration," and by the provisions for indemnity to be subsequently treated of.³ The first question, then, which requires elucidation is: What are the limits within which the register is "capable of rectification"? Another way of stating the same question would be: What are the statutory "estates or rights, acquired by registration," which prevent another "estate, right, or interest" from being given effect to by rectification? And for the present we are only concerned with such unregistered interests as have been the subject of judicial decision and opinion under s. 95.

There are certainly two cases in which the existence of a registered estate will not prevent effect being given to an unregistered interest in the same land: first, where the registered proprietor got on the register by his own fraud and no bonâ fide purchaser has yet acquired any rights in the land; secondly, where the registered proprietor has entered into a binding engagement with respect to the land and no other bonâ fide purchaser has yet acquired any adverse rights.⁴ The fact that the Acts do not except from the

¹ See 1897, s. 8 (1), where a threefold classification is made—"disposition," "registered transmission," "rectification."

² 1875, ss. 95, 97.

³ See 1897, s. 7 (1), as to errors, etc.,

being "not capable of rectification under the principal Act."

⁴ S. 93 of the 1875 Act expressly provides for specific performance of contracts.

benefit of first registration a proprietor who has been registered by means of his own fraud does not appear to make it in the least doubtful that such a registration would be annulled or avoided in some way, so far as the proprietor and volunteers claiming under him were concerned.⁵ In both these cases, then, the register is "capable of rectification," and would be rectified accordingly.

It is possible to construe the words "acquired by registration" in a narrow sense, so as to include only estates acquired by purchase from a proprietor already registered; and the distinction drawn between the effect of a registered transfer for value, and a voluntary transfer,⁶ suggests that perhaps a first registered proprietor was not intended to be placed on the footing of a purchaser for value, but rather of a volunteer against whom the register might be rectified in favour of the person (if any) who could—apart from the registration—show a better title. Such a view would render a proprietor, registered with absolute title, liable to be ejected at any time before he had transferred to a purchaser for value, and so would confer on him an "absolute title" only so far as to enable him to confer a good title on a purchaser. That this is not the proper construction to be placed upon the Acts seems now to be settled by a recent decision of the Privy Council on appeal from New Zealand.⁷ It was there held that under the Australian system no distinction—as to indefeasibility of title—is to be drawn between the first proprietor and any succeeding proprietor. In the event, then, of the claimant to land being held—apart from the registration—to have a better title than the first proprietor, the register could not, if the registration were with absolute title, and the case did not fall within any express or implied exception, be rectified; the mistake in the register would be one "not capable of rectification *under the principal Act.*" It is, however, provided by s. 7 (1, 2) of the 1897 Act that, where indemnity is payable for loss through mistake in the register, and the effect of the mistake is to deprive a person of land of which he is in possession, the register may be rectified notwithstanding that rectification could not have been made under the 1875 Act; the indemnity payable is then paid to the person removed from the register.

The question, whether there is any implied exception to the effect of registration by reason of the registered proprietor having notice of claims to or interests in the property, must now be dealt

⁵ An illustration is afforded by the Australian case of *Ogle v. Aedy* (1887), 13 V. L. R. 461, referred to in Hogg's Aust. Torrens Syst. 825.

⁶ 1875, ss. 30-33, 35, 38; 1903, rr. 140-142.

⁷ *Assets Co. v. Mere Rothi*, [1905] A. C.

176, 202, 204. As to conflicting colonial cases on this point, see Hogg's Aust. Torrens Syst. 825-827. *Hamilton v. Iredale* (1903, 3 S. R. (N. S. W.) 535), which was not cited before the Privy Council, is an independent decision to the same effect as *Assets Co. v. Mere Rothi*.

with. With respect to actual fraud of the proprietor himself, the mere fact of the Acts—as already pointed out—containing no express exception of fraud seems to create no difficulty in implying such an exception on general principles. But with respect to notice in its widest sense, a difficulty arises from the fact that Courts of equity have extended “fraud” to cover cases of notice only, where actual fraud or dishonesty was not present; it has, indeed, been said that “notice is fraud,” where an attempt is made to gain priority in interest by means of priority in registration.⁸ But cases decided under registry Acts which, like the Middlesex, Yorkshire, and Irish Acts, merely make registration an additional formality and not an essential part of the conveyance—which, in fact, set up systems of registration of assurances and not registration of title (*ante*, p. 4)—are not authorities on the construction of Acts under which registration “is the one thing which renders a document which ought to be registered valid.”⁹ The careful statement, in the Acts and Rules, of the rights conferred on a registered proprietor, and the explicit enumeration of exceptions,¹⁰ indicate that the intention of the legislature was to exclude all implied exceptions other than those established by the clearest principles and practice of equity Courts. But one main object of the reform movement which led to the passing of the Land Transfer Acts was to abrogate one of the established principles of the equity Courts, *i.e.* the extreme development of the doctrine of notice; the three Reports of 1830, 1850, and 1857—and the Report of 1870 adopted the 1857 Report generally—agree in attributing to the doctrine of notice a considerable share of blame for the complexity and expense of conveyancing, and in recommending its abrogation (*ante*, pp. 5, 7, 10, 26). The analogy furnished by the Australian system, in cutting down the effect of notice of unregistered interests and trusts, seems to be one which may well be taken as a guide in the construction of the English Acts and Rules. Indefeasibility of title with certain stated exceptions, provisions for enabling persons interested to protect their interests by appropriate entries, and the creation of an insurance fund to furnish compensation for unavoidable losses caused through the state warranty of title—these three features are common to both the English and Australian systems; under the Australian system mere “notice” is not in itself “fraud”—“fraud” means “actual fraud,” and not the “constructive fraud” of equity Courts.¹¹ The difference between the English and the

⁸ *Le Neve v. Le Neve* (1747), Ambl. at 447, Wh. & T. L. C.; *Briggs v. Carnell* (1866) Macassey N. Z. 501; *Battison v. Hobson*, [1896] 2 Ch. 403, 412.

⁹ *General Finance Co. v. Perpetual*

Executors (1902), 27 V. L. R. at 741.

¹⁰ See, for instance, 1875, ss. 7, 13, 18, 30, 35, 50, 52; 1897, ss. 6, 15; 1903, rr. 55, 140.

¹¹ *Assets Co. v. Mers Rohi*, [1905] A. C.

Australian systems is, so far as relates to the present discussion, that in the Australian Statutes the ordinary effect of notice is expressly negatived, and registration obtained by fraud is expressly excepted, in giving statutory efficacy to registration—though the rights of a purchaser subsequently registered in good faith are preserved. But the arguments drawn from the provisions contained in the English Acts as to the conclusive effect of registration, the opportunity for entering notice of adverse claims, and the indemnity for loss through wrongful registration, seem to have as much force as similar arguments in the case of the Australian system.¹² In particular, the provisions of the 1897 Act relating to indemnity contemplate—s. 7 (3)—that the means of protection afforded by the Acts must be availed of in order to secure the right to indemnity, and the very existence of a right to indemnity implies that the register is, in that particular instance and for that particular person, “not capable of rectification.” Moreover, it must not be forgotten that a proprietor, whose title to his *land* cannot be attacked successfully, may yet have to submit to repay to the Crown the amount paid out by way of indemnity, if he has caused or contributed to the loss for which the indemnity was paid (s. 7, sub-s. 6). An owner who obtained registration on the faith of a bad title might therefore, although ignorant of the defective state of his title, have to repay to the Insurance Fund the amount paid out by way of indemnity, and the difference between such a payment and complete loss of his land might, under some circumstances, be inappreciable, and the registered proprietor would thus have gained nothing by his wrongful registration. Finally, the question, whether acting in a certain manner in the face of notice of an interest or claim is or is not actual fraud, is commonly a question of fact; the cases of *Battison v. Hobson* and *Assets Co. v. Mere Roihi* each afford an illustration of what might be held to be actual fraud or dishonesty.¹³

The above considerations seem to justify the conclusion that the mere knowledge, by a registered proprietor of registered land or a registered charge, that—in the words of some of the Australian Statutes¹⁴—an “unregistered interest is in existence shall not of itself be imputed as fraud.”

176, 191, 192, 202, 210–212. The provisions of the New Zealand Land Transfer Acts are summarized in the judgment of the Privy Council, and these (except so far as relates to Native Land titles) are substantially the same as in other Australian Acts. Colonial cases, and references to Statutes, on the efficiency of registration, the effect of notice, and the meaning of “fraud,” may be found in Hogg’s Aust.

Torrens Syst. 825, 834, 839.

¹² See particularly at pp. 191, 192 of the Privy Council’s judgment above cited; and compare s. 7, sub-s. 8, of the Land Transfer Act, 1897.

¹³ See [1896] 2 Ch. at 412; [1905] A. C. at 210.

¹⁴ See references in Hogg’s Aust. Torrens Syst. 833, note 74.

Two classes of cases seem to be contemplated by s. 95: cases where rectification is rather in the nature of an incidental remedy sought by a claimant; and cases where a claimant of an interest in registered land cannot object to the land being registered, but desires to have his own rights in it established. Among the latter class would be included rights in registered land which were unaffected by the registration, and these might consist of: rights in land registered with absolute title, but which, under s. 18 of the 1875 Act, are not deemed incumbrances and need not necessarily be entered on the register; rights in land registered with possessory or qualified title, which, although not yet abrogated by the registration, might in course of time be lost by being barred under Limitation Acts. Rectification of the register appears to be the only effectual method of completely "enforcing" adverse estates and rights not affected by the registration.¹⁵ In the event of a subordinate interest such as an easement or incumbrance being the subject of a claim, an ordinary entry on the register or "title" of the proprietor, by way of statement of the fact, would be sufficient. In the event of the title to the land itself being held to be vested in the claimant—the registered title being possessory only—the proper method of rectification would be to cancel the existing entry of the proprietor's name in the register and substitute the name of the successful claimant. It is conceivable that the registry officers might regard this as substantially a new application for registration by the person entitled, to be assessed for fees accordingly; but the fee of 1s. per cent. of the capital value, on rectification of the register under s. 95, fixed by paragraph B of the Fee Order, 1903, seems to cover even the extreme case suggested, and nothing is said about returning any fees to the proprietor who is removed from the register. This is consistent with the principle that, in the main, it is the *land* which is registered, and that the registration of a particular proprietor is for many purposes a subordinate matter.¹⁶

2. The provision enabling an application to be made directly to the Court, where it is claimed that a wrongful entry has been made, is contained in s. 96 of the 1875 Act. The expression here used is "the Court," which in practice means the Chancery Division of the High Court,¹⁷ whereas in s. 95 it is "any Court of competent jurisdiction." Cases in which application to the Court would be made under this section are necessarily cases in which the registrar is not satisfied with the evidence of the claimant's right to rectification, or

¹⁵ 1875, ss. 8, 9, 18 (6) as amended; 1897, s. 12; 1903, rr. 56, 57.

¹⁶ In the Australian case of *Oyle v. Aedy* (1887), 13 V. L. B. 461, the proprietor who had got on the register by fraud was

ordered to transfer to the rightful owner, and was not allowed his expenses of first registration. And see *In re Allen* (1896), 22 V. L. B. 24, referred to *ante*, p. 47.

¹⁷ 1875, s. 114; 1903, r. 299.

for other reasons cannot or will not make the rectification asked for. A typical instance is the case of registration having been effected on the faith of a statutory instrument of disposition which turns out to be forged; in such a case the registrar would probably, for his own protection, insist on an order for rectification being served on him before making any alteration in the register.¹⁸

By s. 98 of the 1875 Act, a registered disposition, which would—apart from registration—be “fraudulent and void,” is fraudulent and void notwithstanding registration, but subject to rights acquired in virtue of the statutory effect of registered dispositions.¹⁹ This enactment makes quite clear, with respect to proprietors other than first proprietors, what seems to be also implied with respect to first proprietors (*ante*, p. 256), *i.e.* that registration gained by fraud avails nothing in favour of the proprietor himself, or volunteers claiming under him, and the register is—until rights of purchasers for value intervene—still “capable of rectification.” When once a purchaser for value has got on the register, the register—and the mistake made in entering the purchaser on it—are *prima facie* “not capable of rectification,” and the remedy of indemnity might then have to be relied on. But an important modification of the rights of the person who claims the rectification is introduced by the 1897 Act, s. 7 (2), which provides that where a registered disposition would, if unregistered, be “absolutely void,” or where the effect of the mistake which gives rise to a claim for indemnity would be to deprive a person of land of which he is in possession or receipt of the profits, “the register shall be rectified” and the indemnity shall be paid to the person who loses by the rectification.

With respect to the phrase “absolutely void,” this may have been intended to correspond with the “fraudulent and void” disposition of 1875, s. 98. The latter phrase suggests dispositions which are made “void” by the 13 Eliz., 27 Eliz., and Bankruptcy Acts, and the alternative phrase may have been employed in the 1897 Act in view of alterations in the law by statute and judicial decision between 1875 and 1897,²⁰ and in order to make it quite clear that “voidable” transactions were not intended to be referred to.

These “absolutely void” dispositions will also include dispositions of the kind referred to in r. 151, *i.e.* those which are made after the power of disposition has become vested in some person other than the registered proprietor, so that—but for the statutory effect of registration—a disposition by the registered proprietor would no

¹⁸ Such an order was applied for and obtained in the proceedings which led up to *Att.-Gen. v. Odell*, *ante*, p. 115.

¹⁹ 1875, ss. 31, 32, 35, 40; 1903, rr. 140–142.

²⁰ See the Bankruptcy Act, 1883 (46 &

47 Vict. c. 52), s. 47; Voluntary Conveyances Act, 1898 (56 & 57 Vict. c. 21); *In re Williams and Parry's Cont.* (1895), 13 Reports 574, 72 L. T. 869; *In re Carter and Kenderdine's Cont.*, [1897] 1 Ch. 776.

longer have any effect in vesting an estate in a transferee, etc. It seems certain that the provisions of sub-s. 2 of s. 7—as to who should have the land and who should have the indemnity—would, if necessary, be overridden in cases of compulsory acquisition of land under the Lands Clauses Consolidation Act, 1845, and that in no case would the new statutory owners under that Act be compelled to accept the indemnity in lieu of the land; but in most cases the promoters would, by the express provisions of the Act giving them compulsory powers and s. 7 of the 1897 Act read together, come within the very terms of the latter as persons entitled to the land itself.

The mention of mistakes by which persons in possession would be deprived of their land suggests that forged or erroneous transfers of land are pointed at, whilst the preceding category of absolutely void dispositions seems to include forged or erroneous charges or transfers of charges which would not at once “deprive” any one of his land. The effect of sub-s. 2 of s. 7—really a substantive enactment, though in form a proviso—is that the registered proprietor of land or a charge may rely on the register not being permanently altered, except upon production of some properly executed instrument of disposition by himself or his properly constituted representatives; any temporary alteration effected on the faith of an unauthorized disposition will, on the mistake being discovered, be nullified by the register being “rectified” and restored to its original state. It has been suggested²¹ that it would be possible for a whole chain of subsequent dispositions on the register to be undone, if the first of the chain of registered dispositions had been made on the faith of a forged instrument. But it seems very doubtful if this construction could be placed on s. 7 (2) of the 1897 Act. A genuine instrument of transfer, followed by the registration of the transferee, could hardly be a void disposition, even though the transferor had been registered on the faith of a forged instrument.

3. The registrar may, under proper circumstances, “rectify” the register without waiting for an order from the Court; in other than formal matters his decision is subject to appeal.²²

Rectification of the register includes the rectification of the land certificate, charge certificate, etc., and it is provided that the land certificate, etc., must be produced at the registry in order to be altered so as to accord with the register.²³ Although provision is made for the issue of a new land certificate, etc., on evidence being given that the existing certificate has been lost or destroyed, the case of a refusal, on the part of a proprietor against whom rectification

²¹ Br. & Shel. (2nd ed.), 310.

²² 1903, rr. 15–17, 151, 157, 172, 173, 196–198, 253. And as to descriptions, where not precisely defined, 1903, rr.

274–282.

²³ 1897, s. 8 (1), referring to 1875, ss. 109, 110.

of the register is made, to deliver up the certificate has not been provided for otherwise than by the general provisions imposing a penalty for non-production after summons—and except in the case of rectification by virtue of interests not affected by the registration.²⁴ Presumably, the complete inability of the person entitled to it to get possession of the certificate might be regarded as a “loss”; possibly the Court might include in an order for rectification an order for delivery of the certificate, disobedience to which would be more serious than disregard of a registrar’s summons, but it seems doubtful whether there is any jurisdiction to order a new certificate to be issued on any ground other than the loss or destruction of the existing one.

SECTION 2.—INDEMNITY FOR LOSS.

The provisions for indemnifying persons who cannot have the register rectified in their favour, or who are removed from the register, are all contained in s. 7 of the 1897 Act; the establishment of an insurance fund is provided for by s. 21.

In order to give rise to a claim for indemnity at all: either (a) an “error or omission” must have been made “in the register;” or (b) an “entry in the register” must have been “procured by or in pursuance of fraud or mistake” (s. 7, sub-s. 1). In each case the error or omission, or the entry procured by fraud, etc., must have been made “in the register.” No definition is given of “the register” (*ante*, p. 81), and unless its ordinary meaning can be extended, the precise enactments as to loss, etc., by entries “in the register” will exclude from the benefit of the statutory indemnity all claims on account of loss through errors, entries, etc., made either by the registry officers or any other person, in filed plans, land or charge certificates, etc., official certificates of searches, and endorsements of registration on title deeds. Moreover, the registry officers are expressly protected from liability for acts or omissions in the course of their official duties.¹ Mistakes, then, to give rise to claims for indemnity must be made in connexion with actual entries in, or omissions from, the register itself as ordinarily understood. The “errors or omissions” evidently refer to mistakes of the registry officers, and the “entries procured by fraud,” etc., to mistakes for which the registry officers are not responsible.

The unsatisfactory nature of the provisions relating to official

²⁴ 1897, s. 8 (3); 1903, r. 263; and see 1903, rr. 151, 152. R. 151 is dealt with in detail, *ante*, p. 242.

¹ 1875, s. 86. But for this protection it seems clear that the registry officers

might be held liable for loss caused by their acts or negligence: see an Australian case, *Lemme v. Krone* (1890), 16 V. L. R. 613.

certificates of search has been referred to.² If it be only mistakes in the register itself which justify claims for indemnity, it is obvious that, in the event of a transaction being completed by payment of purchase money, etc, on the faith of an official search certificate which is erroneous, if the registry officers afterwards decline to effect registration of the executed instrument of disposition, no claim for indemnity from the insurance fund could be made.

The *prima facie* right to indemnity may be ousted if it be shown that the claimant has "caused or substantially contributed to the loss by his act, neglect, or default;" and "neglect" here includes the omission to have an appropriate entry made on the register restricting the rights of the proprietor (sub-s. 3).

The delivery at the registry of a statutory instrument of disposition which turns out to be a forgery has been held not to be, in itself, an "act" which causes or contributes to a loss eventually arising through the forged instrument being registered.³ But the omission to make a complete search or inquiry at the registry—as, for instance, by not examining the day list—before delivering documents for registration, would be neglect sufficient to bar a claim for indemnity, in case the registration of the document were subsequently annulled; and the mere fact that the registry officers might, by greater care, have prevented the mistake would seem to make no difference;⁴ even if the registry's negligence was the proximate, as distinguished from the original, cause of the loss.⁵ As already pointed out, an official certificate of search, although it would negative any contributory negligence, might be of no value in the event of registration not being effected.

The neglect, on the part of persons interested, to have a proper restriction entered, where the proprietor is in fact a trustee—or even, it would seem, if the fact that he was not beneficial owner appeared on the register incidentally—might thus, in the event of a breach of trust being committed and loss ensuing, prevent the persons beneficially entitled from recovering indemnity from the insurance fund; apparently, however, it would be necessary, in order to oust this right to indemnity, to show that the omission to register a restrictive entry did really contribute substantially to the loss caused directly by the breach of trust, and it is conceivable that under some circumstances the beneficiary's right to indemnity might not be ousted. The question whether omission to enter a restriction, etc., would prevent rectification has been referred to *ante*, p. 259.

² 1903, rr. 289-293, f. 68. See *ante*, p. 170.

³ *Att.-Gen. v. Odell*, [1905] W. N. 81. See *ante*, pp. 84, 115.

⁴ See the Australian cases: *In re Scanlan* (1887), 3 Q. L. J. 43; *In re Jackson* (1890), 10 N. Z. R. 148.

⁵ *Müller v. Davy* (1889), 7 N. Z. R. 515.

Cases may readily be suggested where loss may occur through conduct analogous to breach of trust—as, for instance, improper exercise of a mortgagee's power of sale—which could not have been foreseen, and could not have been prevented by the entry of any restriction, etc. In all such cases, where the register cannot be rectified, the person suffering loss by the mistake or wrongful registration would seem to be entitled to indemnity.

Where there are two or more trustees who are registered as co-proprietors, it is part of the official duty of the registrar to make an appropriate entry, so as to ensure that the land shall not be dealt with except by all the proprietors and not merely the survivors;⁶ if loss ensued through the registrar's omission to make such an entry, the beneficiaries would seem, even if no restriction were entered by themselves, to be entitled to claim indemnity. This view seems to be confirmed by the fact that trusts are not mentioned in s. 7 (3) of the 1897 Act, and are not necessarily *ejusdem generis* with the instances given—mortgages by deposit, and interests under s. 49 of the 1875 Act. The question whether by "cause" of loss is meant proximate cause or the original cause is referred to later on.

The omission to deliver at the registry the executed instrument of transfer or charge, for the purpose of registration, would bar the person claiming under the instrument from recovering indemnity, as being contributory negligence under sub-s. 3 of s. 7; but where all reasonable promptitude had been shown in endeavouring to obtain registration, and an adverse registration had nevertheless been first effected, it would seem that, if the register could not be rectified, the unsuccessful claimant for registration might be entitled to indemnity.

Where a registered proprietor has lost his power of disposition by virtue of statutory rights vested in other persons, whether under the Land Transfer Acts or under other statutes, but—owing to the register being clear—a purchaser from the registered proprietor has also gained statutory rights, the owner under the statutory rights first referred to would seem to have a complete right to indemnity, subject only to his not being barred by reason of any contributory negligence.

Three classes of cases for indemnity are provided for in s. 7 of the 1897 Act: (1) Where the mistake and the register are not capable of rectification under the 1875 Act; (2) Where the register would not have been capable of rectification under the 1875 Act, but is nevertheless expressly directed to be rectified; (3) Certain cases where the register has been rectified under the 1875 Act.

⁶ 1875, s. 83 (3) (as amended by 1897, sched. 1); 1903, rr. 224, 225.

1. The question, how far the register is capable of rectification under the 1875 Act has been referred to *ante*, p. 256. The enactment now under consideration (sub-s. 1 of s. 7 of the 1897 Act) simply directs that, where the "error, omission, or entry is not capable of rectification" under the 1875 Act, indemnity is to be paid for loss suffered by the error, etc. A certain number of cases, however, are taken out of this class and placed in the next class.

2. The cases in this class are specially excepted from class 1, to which they would *prima facie* belong, and sub-s. 2 of s. 7—although in form a proviso only to sub-s. 1—is really a substantive enactment dealing with these excepted cases. The effect of the enactment is referred to *ante*, p. 262—in connexion with rectification—as intended to ensure that registered proprietors shall not lose their property by unauthorized entries on the register, but that persons who by such unauthorized entries become apparent owners shall receive the indemnity—the original and rightful owners retaining the property. The enactment only applies to cases of statutory dispositions of land or charges, after the land has been registered, which are either "absolutely void" apart from registration, or would by their registration have the effect of depriving a person of land of which he is in possession or in receipt of the rents and profits. The words "land of which he is in possession" appear to include, not only land of which he is in possession as having been the registered proprietor before the register was improperly altered, but also such interests as leases whose existence is merely notified on the register, life interests which are treated as incumbrances and not ownership, interests in land which is vested in trustee-proprietors, and interests created under s. 49 of the 1875 Act.

3. The third class of cases consists of those where the register has been rectified under the 1875 Act "by reason of fraud or mistake," in a "registered disposition for valuable consideration," which the grantee—or more correctly disponee—"could not by the exercise of reasonable care have discovered;" in such cases "the person suffering loss by the rectification" is entitled to indemnity (sub-s. 4). This class differs from the class last-mentioned in that it only refers to claims in consequence of rectification which has been effected under the 1875 Act, *i.e.* where the rectified registration was originally effected on the faith of a disposition which was itself—apart from registration—void, and so inoperative, under s. 98 of the 1875 Act, to confer permanent statutory rights on the immediate disponee.

In each of these three classes of cases the "person suffering loss" is to be entitled to indemnity. In the first class the "loss" is "by" the mistake in the register, in the second and third "by the rectification" of the register. A "loss," it would seem, may be "suffered"

in two ways: either when the person concerned has once been de facto registered proprietor of property, and his registration is subsequently rectified as being a nullity;⁷ or when the person concerned has, although entitled to be on the register, not been placed there. In the first case the rectification has been held to be the proximate cause of the loss;⁸ in the other case it is the wrongful or erroneous registration of another person which appears to be the proximate cause of the loss. The present tendency of the Courts appears to be to adopt, in cases of claims for indemnity against custodians of a register—who in effect are in the position of insurers—the rule which prevails in marine insurance law,⁹ i.e. that the loss, in order to fall within the contract for indemnity, must have been proximately or immediately caused by the peril or risk warranted or insured against.¹⁰ In *Att.-Gen. v. Odell*, where this rule was in effect adopted, the person claiming the indemnity was the gainer. Whether the rule will be consistently followed, when it is against the interest of the claimant for indemnity to rely on it, remains to be seen. The following case will illustrate the form in which the question might be raised: A. deposits his land certificate with B. as security for money, and B. gives no notice to the registry and lodges no caution; A. then transfers the land to C., a bonâ fide purchaser, and, in order to obtain registration without producing his land certificate, makes a false declaration that the certificate is lost, and induces the registrar to issue a new certificate under 1897, s. 8 (3); thereupon the purchaser's registration is effected, and B. loses his lien on the land. Is B. barred by his "neglect," in not having an entry made on the register, from recovering indemnity from the insurance fund? His neglect is clearly the original cause of his loss, and A.'s fraud is as clearly the proximate cause of B.'s loss. If then, the proximate cause is to be regarded, B. will be entitled to compensation; if the original cause, then he will not be so entitled.

The ground on which the decision of Kekewich, J., in *Att.-Gen. v. Odell* was based is that the person, whose name is for the time being on the register as proprietor, is really proprietor for the time being. This, of course, necessarily implies that the person, whose name is not on the register, is not proprietor for the time being. There may seem to be some verbal inconsistency between this position and the

⁷ *Att.-Gen. v. Odell*, [1905] W. N. 81, ante, pp. 85, 115; and see *Mere Roihi v. Assets Co.* (1902), 21 N. Z. R. at 715, remarks of Williams, J., on "de facto" registration, which were approved by the Privy Council on appeal, [1905] A. C. at 202.

⁸ *Att.-Gen. v. Odell*, *supra*.

⁹ *Reischer v. Borwick*, [1894] 2 Q. B. 548.

¹⁰ See *Longman v. Bath Electric Tramways*, [1905] 1 Ch. at 663, 668 (company register); *Oakden v. Gibbs* (1882), 8 V. L. B. L. 380, 399 (Land register in Australia), shortly stated in Hogg's Aust. Torrens Syst. 853; *Miller v. Davy* (1889), 7 N. Z. R. 515 (Land register in New Zealand), where the registrar's mistake held not the proximate cause of loss.

enactment, in s. 98 of the 1875 Act, which makes such an instrument as a forged instrument of transfer "void," but on the analogy of other "fraudulent and void" transactions "void" may be held to mean "voidable" only. The conception that a person, who is entered on the register on the strength of a forged instrument of transfer, is nevertheless proprietor—to the exclusion of his predecessor—until he is removed, is in harmony with one of the main principles of the system—that property passes by entry on the register and not by execution of an instrument. The right of a person once entered on the register is thus a real right of property—a legal title—and not a mere title by estoppel, as in the case of an improper transfer of shares on a company's register.¹¹ But so far as securing the two results—that the rightful owner shall not be permanently ousted by the mere fact of a forgery having been committed, and yet that the person temporarily registered as owner by reason of the forgery shall not suffer loss—is concerned, there is an exact analogy between the working of these indemnity provisions and the well-established rules which secure holders of stock in their property, and at the same time provide for an indemnity—by action against the custodians of the register—to bonâ fide purchasers.¹²

It remains to notice the questions of: (1) the measure of damages; (2) procedure.

1. The usual measure of damages or amount of indemnity, to be paid to the person who suffers loss either by being removed from the register, or by failing to get on the register, will presumably be the value of the property lost, together with the expense properly incurred in resisting the rectification of the register, or endeavouring to be placed on the register.¹³ Where the property lost consists of a sum of money lent on mortgage, or paid by way of purchase money, the assessment of the indemnity presents no difficulty. Where the property is land, on which expenditure has been made, the amount of indemnity would presumably include the sum expended in addition to the value of the land, as in the case of eviction and claim under covenants for title.¹⁴ It can hardly be doubted that, in order to be entitled to indemnity, the claimant

¹¹ See *Simm v. Anglo-American Telegraph Co.* (1879) 5 Q. B. D. 188.

¹² See *Davis v. Bank of England* (1824), 2 Bing. 393, 27 R. R. 667; *In re Bahia and San Francisco Ry.* (1868), L. R. 3 Q. B. 584; *Dixon v. Kennaway*, [1900] 1 Ch. 833. In *Midland Ry. v. Taylor* (1861), 8 H. L. C. 751, the purchaser got the shares, and the true owner the damages.

¹³ See *Att.-Gen. v. Odell*, [1905] W. N. 81, *supra*.

¹⁴ *Bunny v. Hopkinson* (1859), 27 Beav. 565. The following Australian cases also afford illustrations of the measure of damages for loss: *Messer v. Gibbs* (1887), 13 V. L. R. 854, [1891] A. C. 248; *Hayes v. Bourne* (1895), 7 Q. L. J. 146; *Cox v. Bourne* (1897), 8 Q. L. J. 66; *Papworth v. Williams* (1899), 20 N. S. W. 280, [1900] A. C. 563; *Finucane v. Registrar of Titles*, [1902] S. B. Q. at 94.

must have lost some substantial right of property capable of a money valuation; thus the loss of a bare legal estate would seem, as under the Australian system, to confer no right to indemnity.¹⁵

2. No method of procedure is laid down in the Acts and Rules for enforcing payment of indemnity out of the insurance fund, which, by s. 21 of the 1897 Act, is to be invested by the Treasury in the names of trustees. The claimant may, however, apply to the registrar to award him indemnity, and this seems to be the most convenient course, since an appeal lies from the registrar's decision both by the claimant and the trustees of the insurance fund,¹⁶ and the trustees would, as a matter of course, obey the order of the Court as to any payment of indemnity. S. 7 of the 1897 Act, sub-ss. 5, 6, and 7, contain the only provisions as to procedure. The claim must be made within six years from the time when the claimant knew, or should have known, of its existence.

After payment of such a claim the registrar may recover the amount from any person who caused or contributed to the loss. This provision would cover the case of a person who had wilfully concealed facts relating to his title, so as to obtain registration with absolute title, and had then transferred to an innocent purchaser against whom the register could not be rectified. The case of an owner who is unaware of a defect in his title, and in good faith obtains registration with absolute title, may perhaps be considered to be covered by the principle of the decision of Kekewich, J., in *Att.-Gen. v. Odell*, that the presentation for registration of an invalid instrument is not an "act" causing or contributing to a subsequent "loss"; in such a case, if that be the correct view, the indemnity could not be recovered by the registrar. The principle, in fact, seems to be the same as that already noticed (*ante*, p. 257) with respect to rectification—*i.e.* that an innocent first proprietor with a bad title will not, merely on that account, be removed from the register.

SECTION 3.—OTHER REMEDIES.

As already pointed out (*ante*, p. 263) the insurance fund is only liable to be called upon in cases of loss by reason of mistakes being made in the register itself, and the registry officers are expressly exempted from liability for mistakes made by them—in the register or otherwise, apparently. The remedies for making losses good, by means other than rectification or indemnity, will consist of the

¹⁵ *Blackwell v. Davy* (1889), 8 N. Z. R. 129.

¹⁶ *Att.-Gen. v. Odell*, [1905] W. N. 81.

right to bring actions against unofficial persons under various circumstances. Loss may also be caused by entries being made to support claims which turn out to be unfounded; some cases of this sort are expressly provided for in the Acts and Rules, where cautions have been lodged without reasonable cause.

Losses, for which the only remedy is an action for damages, may be classed as caused by: (1) Unfounded claims; (2) Inability to carry out a contract for sale; (3) Breaches of trust; (4) Mistake in preparation or custody of documents; (5) Purchase by County Council.

1. Actions for loss by unfounded claims are expressly authorized by the Acts and Rules in two cases: where a caution has been lodged (i.) against first registration; (ii.) against dealings with registered land.

i. The question, as to what is sufficient interest to entitle a person—under s. 60 of the 1875 Act—to lodge a caution against first registration, has been referred to *ante*, p. 76. By s. 63, compensation may be recovered if the caution be lodged “without reasonable cause.” The meaning of the enactment seems to be that an action may be brought against the person who lodged the caution, to recover damages—or “compensation”—if actual damage has been sustained by the plaintiff, and the caution was lodged without reasonable cause. It is presumed that, in general, one test as to what was “reasonable cause” would be the result of the contest between the applicant for first registration and the cautioner, and that if the right claimed by the cautioner were one in respect of which a caution might be lodged, and the cautioner were eventually held to have the right or interest in respect of which he lodged his caution, he could not be said to have lodged the caution without reasonable cause. On the other hand, even the failure to substantiate the right claimed would not, if the claim were reasonable and *bonâ fide*, necessarily be conclusive as to his having acted without reasonable cause; but the right claimed must not, of course, have been one as to which it was clear that a caution could not be lodged. Since lodging a caution, under s. 60, is tantamount to disputing the owner’s right of property in the land (*ante*, p. 77), any action for “compensation” brought by any owner, or other person interested in the property, against the cautioner on the ground that he has “sustained damage by the lodging of such caution,” would be in the nature of an action for slander of title; accordingly, it would seem that in any such action special damage, or actual loss, would have to be both alleged and proved, to enable the plaintiff to succeed.¹ The phrase in s. 63—as to recovering “such compensation as may be just”—seems also to point to a cause of action based

¹ See *Ratcliffe v. Evans*, [1892] 2 Q. B. 524, 527.

on substantial, and not merely technical, grounds. And it is, perhaps, to make this clearer that s. 64—which enacts that a caution “shall not prejudice the claim or title of any person”—was inserted; otherwise the meaning of the section, following as it does s. 63, is not very apparent. There is no such corresponding enactment in the group of enactments to which ss. 53 and 56 belong—to be now noticed.

ii. The enactment, which gives a right of action for “compensation” against a cautioner in respect of a caution lodged against dealings after the land has been registered, is contained in s. 56 of the 1875 Act, and only differs verbally—and that very slightly—from the enactment in s. 63 above referred to. As s. 63 is one of a group of sections headed “Cautions against entry of land on register,” so s. 56 is one of a group of sections headed, “Cautions against registered dealings.” In each case the effect of this collocation seems to be to confine the word “caution” to the cautions mentioned respectively in the two headings. The question, as to what is sufficient interest—under s. 53—to entitle a caution to be lodged, is dealt with *ante*, p. 129. The remarks made above, as to “reasonable cause,” and the necessity for showing actual loss, in the case of cautions lodged under s. 60, seem to apply also to cautions lodged under s. 53. There is, however, in the group of sections to which ss. 53 and 56 belong, no enactment corresponding with s. 64.

It has been stated above that the 1875 Act provides for two kinds of “caution.” The 1897 Act, however, authorized rules to be made with respect to cautions being lodged against the registration of possessory titles as absolute, and rules have been so made accordingly.² Nothing is said in the Rules, however, as to any right of action for “compensation” on account of loss through a caution being lodged against a possessory title being registered as absolute; as pointed out above, the two enactments in the 1875 Act (ss. 56, 63) appear to be confined to two kinds of cautions. The case of a right of action for loss by lodging a caution against the registration of a possessory title as absolute appears to be, so far as the Acts and Rules are concerned, a *casus omissus*. Nevertheless, the analogy of the right of action for slander of title suggests that, in case of special damage being suffered, an action would lie, independently of the Acts and Rules, against a person who improperly lodged a caution against the registration of a possessory title as absolute.

The analogy of an action for slander of title, just referred to, also suggests that an owner of land might, in the event of another

² 1897, s. 22 (6) (e); 1903, r. 226; include cautions against registration of possessory titles as absolute. and rr. 226–233 are evidently intended to

person claiming adversely to him, and unsuccessfully applying for first registration in his own name, be entitled to recover damages from the unsuccessful applicant, if actual loss could be shown—as, for instance, loss of a sale, or loss of rents.³

2. It is possible that, where specific performance is claimed against a vendor of registered land, the vendor might have so transferred the land as to put it out of his own power to transfer to the purchaser, and out of the purchaser's power to obtain rectification of the register. Under these circumstances, the purchaser would ordinarily, of course, have no claim for indemnity out of the insurance fund, and would only be entitled to recover damages from the vendor, these being assessed—at any rate—at the amount of the deposit paid and necessary expenses.⁴ Whether any further sum could be recovered by way of damages—by reason of loss of a re-sale at an enhanced price, increase in value, or loss of bargain generally—would depend on whether the defect in title was such as to fall within the rule laid down in *Flureau v. Thornhill*⁵ and *Bain v. Fothergill*,⁶ or whether the cause of non-completion lay entirely with the vendor himself.⁷ Although the registration of land is intended to effect, and must result in effecting, some reform in the “complicated law which governs real estate in this country,”⁸ and the rule of law laid down in *Flureau v. Thornhill* will probably apply much less frequently where registered land is concerned, yet it is presumed that the principle of that rule will continue to apply as much to registered, as to unregistered land.⁹

3. Although, as pointed out *ante*, p. 264, beneficiaries, who neglect to have an appropriate restriction entered on the register and suffer loss through a breach of trust, may find that they have no remedy against the insurance fund, yet the remedies against their trustees, to which they would be entitled in the case of unregistered land will remain in full force, just as in the case of

³ Such an action has been brought in Australia, but it was not necessary to decide whether it would lie, the special damage not being sufficiently alleged: *Lachaume v. Broughton* (1908), 3 S. R. (N. S. W.) 475.

⁴ See the Australian cases in illustration of the rule and exceptions as to damages for loss of bargain, where the land is registered: *Merry v. Australian Mutual Provident Soc.* (1872), 3 Q. S. O. B. 40; *Perrin v. Reynolds* (1886), 12 V. L. R. 440; *Ross v. Robinson* (1886), 12 V. L. R. 764; *Colonial Investment v. Cobain* (1888), 14 V. L. R. 740; *Mailler v. Clayton* (1899), 1 W. A. B. 3.

⁵ (1775), 2 W. Bl. 1078.

⁶ (1874), L. R. 7 H. L. 158.

⁷ See *Engell v. Fitch* (1869), L. R. 4

Q. B. 659; *Day v. Singleton*, [1899] 2 Ch. 320. In the following Australian cases damages for loss of bargain were awarded: *Ross v. Robinson*, *Colonial Investment v. Cobain*, *Mailler v. Clayton*, *supra*, note 4.

⁸ The quotation is from *Bain v. Fothergill* (1874), L. R. 7 H. L. at p. 212, speech of Lord Hatherley.

⁹ See the Australian cases cited in notes 4 and 7, *supra*. It was suggested in one Colonial case that the reform in land law introduced by the Australian system might make it doubtful whether the principle of *Flureau v. Thornhill* would continue to apply to land held under that system: *Joske v. Huon* (1882), Udall's Fiji Reports, 68. The suggestion seems to be fully answered by the Australian cases already cited.

a share register notwithstanding s. 30 of the Companies Act, 1862.¹⁰ It is not intended that registration shall interfere with the enforcement of personal rights as between the registered proprietor and other persons, where rights of third parties are not affected.¹¹ This is a feature common to the English and Australian systems, and Australian decisions on this point may be said to be *a fortiori* authoritative, for the Australian Statutes expressly provide that breaches of trust shall not be the subject of indemnity from the insurance funds, and in terms give a greater degree of indefeasibility to the title of a registered proprietor than do the English Acts.¹² It has been held over and over again that the Australian system does not abrogate the right to enforce personal equities.¹³

4. Actions against special agents, such as solicitors, bankers, surveyors, etc., for damages by reason of their negligence in the preparation or custody of documents, do not depend directly on any particular provisions in the Acts or Rules; the statutory effect of registration, however, may occasionally deprive the person who suffers loss by such negligence of any remedy other than an action for damages against the agent. And even where rectification of the register can be obtained, the expense of this might well be recovered from the person whose negligence caused the necessity for rectification. Under the Australian system damages have been recovered, on this footing, from a surveyor whose inaccuracy in preparing a plan caused a mistake to be made.¹⁴

5. It is provided, by s. 19 of the 1897 Act, that after a County Council has been placed 'on the register as proprietor of land purchased under the Small Holdings Act, 1892, purchasers from them must be registered with absolute title, and the remedy of a person claiming by title paramount to the County Council is in damages only, against the Council. In such a case the register cannot, apparently under any circumstances, be rectified, in favour of the person who has a paramount title and against the registered proprietor of the small holding.

¹⁰ *Bradford Banking Co. v. Briggs* (1886), 12 A. C. at 32. The practice in Scotland, as to transfer of shares to trustees "as trust disponees" answers to the practice under the Land Transfer Acts of noticing the existence, though not the particulars, of a trust on the register; see the notes and references to Scottish cases under s. 30 in Buckley on Companies.

¹¹ 1875, ss. 7, 13; 1903, r. 55. The distinction between claiming adversely to, and claiming as *cestui que trust* under, a registered proprietor, is pointed out in

Assets Co. v. Mere Roihi, [1905] A. C. at 204, 205.

¹² See, for instance, the New South Wales Real Property Act, 1900, ss. 43, 133; Hogg's Aust. Torrens Syst. 847, 849, and 825, as now corrected by *Assets Co. v. Mere Roihi*, [1905] A. C. 176.

¹³ See, in Victoria, *Maddison v. McCarthy* (1865), 2 W. W. & a' B. 151; in New South Wales, *Sempill v. Jarvis* (1867), 6 S. C. R. Eq. 68; Hogg's Aust. Torrens Syst. 779.

¹⁴ *Archard v. Ellerker* (1888), 10 A. L. T. 196.

THE LAND TRANSFER ACTS AND RULES.

THE Acts of 1875 and 1897 and Rules of 1903 are here printed in a "consolidated" form, that is, in a form approximating—with respect to the collocation of the sections and rules—to that in which they would appear if consolidated and re-enacted as a single code or Statute. It is almost unnecessary to say that no alteration in the wording has been made, the only difference in the present arrangement, from that usually adopted, being that, as far as convenient, sections and rules relating to the same subject have been grouped together so as to be more readily referred to. The sections of the 1875 Act are printed in their own numerical order, and the sections of the 1897 Act and the Rules of 1903 are arranged under the appropriate sections of the 1875 Act. Headings to groups of sections and rules have been introduced and printed in a distinctive type. The ordinary marginal notes to the two Acts have been omitted and replaced by the numbers of the sections and Rules grouped together, printed in a distinctive type.

In order that any particular section of the 1897 Act or rule of the 1903 Rules may be found, the two following tables are given :—

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LAND TRANSFER ACT, 1875.
 LAND TRANSFER ACT, 1897.
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Titles, Preambles, Preliminary.

1875, title,
preamble.

CHAPTER 87.

An Act to simplify Titles and facilitate the Transfer of Land
 in England. [13th August, 1875.]

*Whereas it is expedient to make further provision for the
 simplification of the title to land, and for facilitating the trans-
 fer of land, in England :*

*Be it therefore enacted by the Queen's most Excellent Majesty,
 by and with the advice and consent of the Lords Spiritual and
 Temporal, and Commons, in this present Parliament assembled,
 and by the authority of the same, as follows.*

Preamble repealed by Statute Law Revision (No. 2) Act, 1893.

CHAPTER 65.

1897, title,
preamble.

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August, 1897.]

Whereas it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act :—

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Land Registry.

1903,
introduc-
tion.

Land Transfer Acts, 1875 and 1897.

General Rules.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, with the advice and assistance of the Honourable Sir Arthur Kekewich, a Judge of the Chancery Division of the High Court of Justice, Charles Fortescue Brickdale, Esq., Registrar of the Land Registry, Sir Howard Warburton Elphinstone, Bart., and Philip Spencer Gregory, Esq., Barristers-at-Law, chosen by the General Council of the Bar, James William Clark, Esq., Barrister-at-Law, chosen by the Board of Agriculture, and William Melmoth Walters, Esq., Solicitor, chosen by the Council of the Incorporated Law Society, by virtue and in pursuance of the Land Transfer Acts, 1875 and 1897, and of all other powers and authorities enabling in that behalf, do make the following General Rules for the purpose of carrying the said Acts into execution.

Dated this 18th day of December, 1903.

HALSBURY, C.

Preliminary.

1875, ss.
1, 2, 3.

1. This Act may be cited as the Land Transfer Act, 1875.

2. This Act shall not apply to Scotland or Ireland, and land shall not be registered under this Act unless it is of freehold tenure or is leasehold held under a lease which is either immediately or mediately derived out of land of freehold tenure; but for the purposes of this Act customary freehold, in any case in which an admission or any Act by the lord of the manor is necessary to perfect the title of a purchase [*sic*] from the customary tenant, shall not be deemed to be land of freehold tenure.

1875, ss.
1, 2, 3

[If, at any time, land is found to have been registered with absolute or qualified title contrary to the provisions of this section, the registration shall not be annulled, but shall be deemed an error not capable of rectification under the principal Act, and any person suffering loss thereby shall be indemnified accordingly.]

Paragraph in brackets added by 1897, sched. 1.

3. This Act shall come into operation on the first day of January, 1876, which day is in this Act referred to as the commencement of this Act; but any orders or rules, and any appointment to any office, may be made under this Act at any time after the passing thereof, but shall not take effect until the commencement of this Act.

Repealed by Statute Law Revision (No. 2) Act, 1893.

1897, ss.
18, 25, 26,
sched. 1.

18. The principal Act shall be further amended in regard to its minor details in the manner set forth in the first schedule hereto.

The First Schedule.

Minor Amendments of the Principal Act.

The sections of the principal Act mentioned in the first column of this schedule are repealed or amended to the extent and in the manner set forth in the third column.

1.	2.	3.
Section in Principal Act.	Subject Matter.	Extent of Repeal or Nature of , 'Amendment.

The amendments are introduced into the relevant sections of the 1875 Act.

25. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

26. This Act may be cited as the Land Transfer Act, 1897, and shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Land Transfer Acts, 1875 and 1897.

1903, rr.
344, 345

Former Rules Rescinded.

344. The Land Transfer Rules, 1898, the Land Transfer Rules, June, 1899, and the Land Transfer Rules, February, 1903, are rescinded.

Short Title and Commencement.

1903, rr.
344, 345.

345. These Rules may be cited as the Land Transfer Rules 1903, and shall come into operation on the first day of January, 1904.

Interpretation.

4. In this Act, unless there is something inconsistent in 1875, s. 4. the context,—

“Person” includes a corporation and any body of persons unincorporate :

“Registrar,” “court,” and “general rules,” mean such “registrar,” “court,” and “general rules,” as are in this Act respectively in that behalf mentioned :

“Prescribed” means prescribed by any general rules made in pursuance of this Act :

“The Court of Chancery,” and “Court of Appeal in Chancery,” and “Her Majesty’s Superior Courts,” include any courts in which the powers of the Courts so referred to by name, may be for the time being vested :

“The Land Registry Act, 1862,” means the Act passed in the session held in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter fifty-three, intituled “An Act to facilitate the proof of title to and the conveyance of real estates.”

The definition of land contained in the Act of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter twenty-one, intituled “An Act for shortening the language used in Acts of Parliament,” shall not apply to this Act.

24—(1.) All hereditaments, corporeal and incorporeal, shall 1897, s. be deemed land within the meaning of the principal Act and ²⁴ this Act, except that nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such.

(2.) In this Act the expression “personal representative” means an executor or administrator.

1903, r. 1.

Interpretation.

1. (1.) In these Rules "the Act of 1875" and "the Act of 1897" mean the Land Transfer Acts of those years respectively, and "the Acts" has a corresponding meaning.

(2.) The Interpretation Act, 1889, is to apply for the purpose of the interpretation of these Rules, as it applies for the purpose of the interpretation of an Act of Parliament, except so far as it may be inconsistent with the Acts or these Rules.

Unless there is something inconsistent in the context or in the Acts :—

(3.) "Land Charge" means a rent or annuity or principal moneys payable by instalments, or otherwise, with or without interest, charged (whether upon the application of any person or not) otherwise than by deed, upon land, under the provisions of any Act of Parliament for securing to any person either the moneys spent by him or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament; and a charge under the thirty-fifth section of the Land Drainage Act, 1861, or under the twenty-ninth section of the Agricultural Holdings (England) Act, 1883; but does not include a rate or scot.

(4.) "Land Certificate" includes "office copy of a registered lease."

(5.) "Mines and Minerals" include rights of entry, search, and user, and other rights and reservations incidental to, or required for the purpose of giving full effect to, the enjoyment of rights to mines and minerals, or of property in mines and minerals.

(6.) "Statutory declaration" includes affidavit.

(7.) "The Remuneration Order, 1882," means the general order made in pursuance of the Solicitors' Remuneration Act, 1881.

(8.) Where reference is made to the solicitor of a person making an application or otherwise concerned with the register, the authority of the solicitor for the particular purpose shall, if required, be established to the satisfaction of the registrar.

(9.) The expressions "tenant for life," "settled land," "settlement," and "trustees of the settlement" have the same meaning as in the Settled Land Acts, 1882 to 1890.

First Registration.

Part I.

1875, ss.
5, 6.

Entry of Land on Register of Title.

(1.) Freehold Lands.

5. A land registry shall be established, and *on and after the commencement of this Act* the following persons; (that is to say,)

(1.) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether subject or not to incumbrances; and

(2.) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether subject or not to incumbrances; and

(3.) Any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether subject or not to incumbrances,

may apply to the registrar under this Act to be registered, or to have registered in his stead any nominee or nominees *not exceeding the prescribed number*, as proprietors or proprietor of such freehold land with an absolute title or with a possessory title only: Provided, that in the case of land contracted to be bought, the vendor consents to the application.

6. Where an absolute title is required the applicant or his nominee shall not be registered as proprietor of the fee simple until and unless the title is approved by the registrar.

Where a possessory title only is required the applicant or his nominee may be registered as proprietor of the fee simple on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed.

"*On and after*," etc., repealed by S. L. Rev. (No. 2) Act, 1893.

"*Not exceeding*," etc., in effect repealed by 1897, s. 14 (1).

Part II.

1903, rr.
18-47, 95.

First Registration.

Possessory Title.

18. Application for registration with a possessory title shall be made by delivering at the registry a written application to the effect of form 1 in the first schedule hereto, accompanied by either

(a.) A deed or other document conferring on the applicant

1903, rr.
18-47, 95.

a title under which an application for registration as first proprietor of land can be made; or

- (b.) A statutory declaration by the applicant or his solicitor in form 2 in the first schedule hereto, or to the like effect.

The application shall in either case contain or be accompanied by sufficient particulars, by plan or otherwise, to enable the land to be fully identified on the ordnance map.

In cases under paragraph (a) where the accompanying document of title is a probate, letters of administration, order of court, or other document of record, and in all cases under paragraph (b), the application shall also be accompanied by the latest document of title other than a document of record in the possession or under the control of the applicant.

If the application is for registration in the name of a nominee, or is made by a purchaser, the consent in writing of the nominee, or of the vendor or his solicitor, shall also be left with the application.

19. It shall not be necessary to state in the application whether the property is subject to any, or, if any, what, incumbrances, conditions, or other burdens; but a statement in writing as to the incumbrances, conditions, or other burdens affecting the land at the date of the first registration thereof may be made on the first registration of the land as part of the application by the applicant or his solicitor, or subsequently by the proprietor or his solicitor, and, if made, shall be filed and referred to in the register. Supplemental statements showing that such incumbrances, conditions, or burdens, or any of them, have been discharged or modified may be similarly made and filed at any time after the filing of the original statement.

20. No particulars of the incumbrances, conditions, or burdens shall be entered on the register, but an entry shall be made that a statement or supplemental statement has been filed. Copies or abstracts of or extracts from the documents referred to in any statement or supplemental statement may be filed therewith.

21. The applicant's title will not be investigated by the registrar, and registration will not affect, or prejudice the enforcement of, any estate right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor, whether such estate, right or interest appears in the register or not.

22. Applications delivered at the registry shall be entered in a book in the order in which they are delivered, and shall be numbered accordingly. The plans and entries for the register shall be prepared in the registry and shall, unless the registrar shall think it unnecessary, be approved by the applicant or his solicitor. The registration in each case shall be completed as of the day on which and of the priority in which the application was delivered. The land certificate shall then be prepared and shall either be delivered to the applicant, or (if he prefers it) be deposited in the registry. 1903, rr. 18-47, 95.

23. The draft entries for the register approved by the applicant or his solicitor may, if the registrar shall think fit, be accepted in lieu of an application in form 1 in the first schedule hereto.

24. If a deed or other document of title is delivered with the application, it shall be marked with notice of the registration and with the number of the title, and shall at the applicant's option either be retained in the registry, or be delivered to him. In the latter case a copy or sufficient abstract thereof for filing shall be furnished by him, if required.

25. Where the deeds produced to be marked under section 72 of the Act of 1875 are numerous, the registrar may act upon a statutory declaration by the solicitor of the applicant to the effect that all the lands included in the application are dealt with by the deeds produced, and that the deeds produced are all the deeds necessary to be marked, for the purposes of that section, in order to give notice to any person dealing with the land of the fact of registration.

26. If in any case it is proved to the satisfaction of the registrar by the statutory declaration of the applicant's solicitor, or otherwise, that any document of title required to be marked under that section cannot be produced, the registrar may complete the registration without such production.

27. No entry in the charges register shall be made except as provided by rules 20 and 64, and except such entries as might be made at any time against an absolute title.

28. Where the land included in any application for registration is subject to the jurisdiction of the Middlesex or Yorkshire registries of deeds, the registration shall be deemed, for the purpose of removing the land from that jurisdiction, to have taken place at the beginning of the day on which the application is delivered at the land registry, and prior to any registration on that day of a memorial in the local deed registry.

1903, rr.
18-47, 95.

29. Where the estate of the first registered proprietor is or may be subject to a restraint on alienation, the registrar shall enter a restriction protecting any such restraint in such manner and form as he shall think fit.

Absolute Title.

30. Application for registration with an absolute title shall be made by delivering at the registry a written application to the effect of form 3 in the first schedule hereto. Such application shall state the county and parish or place in which the land is situate, and the name of the estate, or other short particulars sufficient to identify it.

31. If the applicant for registration desires to annex conditions to the land under the provisions of section 84 of the Act of 1875, as amended by the Act of 1897, such conditions shall be stated in or delivered with the application.

32. When the application is for registration in the name of a nominee, or is made by a purchaser, the consent in writing of the nominee, or of the vendor or his solicitor, shall be delivered with the application.

33. Where any land comprised in an application for registration is below high-water mark at ordinary spring tides, the fact shall be stated in the application, and the notices required by section 66 of the Act of 1875 shall be prepared by the applicant and served through the registry within seven days after the delivery of the application.

34. There shall also be delivered with the application an abstract of title in the usual form, together with all such deeds and documents relating to the title as the applicant has in his possession or under his control, including opinions of counsel, abstracts, contracts for or conditions of sale, requisitions, replies, and other like documents, in regard to the title; and also a list of the tenants and occupiers of the land. Any other documents required to be produced in support of the abstract shall also be delivered with the application, or shall be produced at a time and place appointed for the purpose. A schedule of all documents delivered at the registry in support of the abstract shall be left with the documents.

35. All searches and inquiries which the registrar shall consider necessary in the examination of, or in relation to, the title shall be made by such person and in such manner as the registrar shall direct.

36. The title shall be examined by or under the superin-

tendence of the registrar in accordance with the usual conveyancing practice, subject as follows:—^{1903, rr. 18-47, 95.}

- (a.) The whole or any portion of the examination of the title may be referred by the registrar, if he thinks fit, for the opinion of one of the examiners of title appointed under rule 313, and the registrar may act on such opinion.
- (b.) When either (1) the land has been sold or purchased under an order of the Court, or (2) has been registered with a possessory or qualified title for six years prior to the date of the application for registration with an absolute title, the first proprietor having been a purchaser on sale, or (3) when the title has been fully investigated before the date of the application, the examination may be modified in such manner as the registrar may think fit.

37. An advertisement of the application shall be inserted at least once in the *London Gazette*, and shall also be inserted in such local or other newspaper or newspapers, for such number of times and at such intervals of time, as shall be fixed by the registrar in each case. The advertisement shall give the name and address of the applicant, the name (if any) and short description of the land, and the county and parish or place in which it is situate; and shall require objections (if any) to be made before the expiration of a stated period not less than two months from the appearance of the latest advertisement.

38. The fee for each such advertisement in the *London Gazette* shall be five shillings.

39. With a view to the saving of expense the advertisements of two or more applications may be grouped, if the registrar approves: and the advertisement in the *London Gazette* shall be in the tabular form given in form 4 in the first schedule hereto.

40. The applicant shall furnish all information that the registrar may require, and notices shall be served on the tenants and occupiers and such other persons (if any) as the registrar shall deem necessary.

41. Any person may, by notice in writing, signed by himself or his solicitor and delivered at the registry, object to the registration. Such notice shall state concisely the grounds of the objection and give the address in the United Kingdom of the person delivering the notice, and, if it is delivered by a

1903, rr.
18-47, 95. solicitor, shall give the name and address of the person on whose behalf it is given.

42. The registrar shall thereupon give notice to the applicant of the objection, and the title shall not be registered as absolute until the objection has been withdrawn or otherwise disposed of. The applicant may obtain an appointment before the registrar for the hearing of any objection, and shall give the objector at least seven clear days' notice of such appointment. If the objector does not appear at the time appointed, his objection shall be treated as withdrawn unless the registrar allows another appointment to be made. At the hearing of the objection any party may be heard in person or by his counsel or solicitor.

43. Where any person so objecting to registration desires to have any entry for his protection made in the register, he shall proceed in the same manner as is directed with respect to applications made under rule 215, unless the applicant for registration consents to the entry being made.

44. When all requisitions and objections (if any) have been disposed of, the proper entries for the register shall be drawn by the registrar and approved by the applicant or his solicitor; and at the expiration of the time fixed by the advertisements, and by any notices that may have been directed, and after the requirements of sections 70 and 72 of the Act of 1875 have been complied with, the registration shall be completed: and the documents of title, other than such as have under these Rules to be retained in the registry, shall be delivered to the applicant.

45. The land certificate shall thereupon be prepared, and shall either be delivered to the proprietor, or, if he prefers it, be deposited in the registry.

46. Incumbrances, conditions, and other burdens (including fee farm grants, or other grants reserving rents or services) to which the fee simple estate in the land may be subject, shall be entered in the register in accordance with the title produced; and may be entered either directly, or by reference to the instruments by which they are created, or by setting out extracts therefrom.

47. The evidence to show that the requirements of section 70 of the Act of 1875 have been complied with, shall be a statutory declaration in form 5 in the first schedule hereto.

Priority Notices.

1903, r.
95-

95. A person entitled to apply for registration as first proprietor of land (whether his application requires the consent of any other person or not) or his solicitor, or with his consent in writing any other person or his solicitor, may lodge at the registry a notice (to be called a priority notice) in form 18 in the first schedule hereto, reserving priority for a specified application intended to be subsequently made, and a written acknowledgment of the receipt of the notice shall be given him. If within 14 days from the lodgment of the notice, or within such further time as the registrar shall think fit, an application is made in accordance with the notice and is accompanied by the acknowledgment, it shall be dealt with in priority to any other application affecting the same land which may have been made in the meantime. On the expiration of the period fixed as aforesaid for the operation of the notice it may be cancelled.

7. The first registration of any person as proprietor of freehold land, (in this Act referred to as first registered proprietor,) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:—

- (1.) To the incumbrances, if any, entered on the register; and
 - (2.) Unless, under the provisions of this Act, the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances; and
 - (3.) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled,
- but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

1903, r.
254.

Part V.

Miscellaneous.

Appurtenances.

254. The registration of a person as proprietor of land shall vest in him, together with the land, all rights, privileges, and appurtenances appertaining or reputed to appertain to the land or any part thereof, or, at the time of registration, demised, occupied, or enjoyed therewith, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

1875, ss.
8, 9.

8. The registration of any person as first registered proprietor of freehold land with a possessory title only shall not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor; but, save as aforesaid, shall have the same effect as registration of a person with an absolute title.

9. Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date, or arising under a specified instrument or otherwise particularly described in the register, and a title registered subject to such excepted estate, right, or interest shall be called a qualified title, and the registration of a person as first registered proprietor of land with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted.

1903, rr.
48, 49.

48. If the registrar is of opinion that an absolute title may be registered at the expiration of a certain period or on the occurrence of a particular event, he may file a note of the fact, and, on the expiration of that period, or on proof to his satisfaction of the occurrence of the event he may, if he think fit, register the title as absolute accordingly. In the meantime the title shall be registered in the then proper manner.

Qualified title.

1903, rr.
48, 49.

49. If upon an application for an absolute title it appears to the registrar, upon the examination of the title, that a qualified title only ought to be entered on the register, and the applicant on being informed thereof requests in writing that such qualified title shall be entered, the registrar shall frame the proper entries for the register, and shall obtain the applicant's approval of them, and shall register the qualified title accordingly.

10. On the entry of the name of the first registered proprietor of freehold land on the register, the registrar shall, if required by such proprietor, deliver to him a certificate, in this Act called a land certificate, in the prescribed form; the certificate shall state whether the title of the proprietor therein mentioned is absolute, qualified, or possessory.

1875, ss.
10-16.

And see s. 78, *post*.

(2.) Leasehold land.

11. A separate register shall be kept of leasehold land, and *on and after the commencement of this Act* any of the following persons; that is to say,

- (1.) Any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired, whether subject or not to incumbrances; and
- (2.) Any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease as is described in this section, whether subject or not to incumbrances; and
- (3.) Any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease as is described in this section, whether subject or not to incumbrances;

may apply to the registrar to be registered, or to have registered in his stead any nominee or nominees *not exceeding the prescribed number*, as proprietor or proprietors of such leasehold land, *with the addition where the lease under which the land is held is derived immediately out of freehold land, and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held:*

1875, ss.
10-16.

Provided,—

That in the case of leasehold land contracted to be bought, the vendor consents to the application.

Every applicant for registration of leasehold land shall deposit with the registrar the lease of the land in respect of which the application is made, or if such lease is proved to the satisfaction of the registrar to be lost a copy of such lease or of a counterpart thereof, verified to the satisfaction of the registrar; and such lease or attested copy is in this Act referred to as the registered lease.

Leasehold land held under a lease containing an absolute prohibition against alienation, shall not be registered in pursuance of this Act; and leasehold land held under a lease containing a prohibition against alienation without the licence of some other person, shall not be registered under this Act until and unless provision is made in the prescribed manner for preventing alienation without such licence by entry on the register of a restriction to that effect, or otherwise.

[A sub-lease shall, and a term created for mortgage purposes shall not, be deemed a lease within the meaning of this section.]

"On and after," etc., repealed by S. L. Rev. (No. 2) Act, 1893.

"Not exceeding," etc., repealed in effect by 1897, s. 14 (1).

Other words in italics repealed by 1903, r. 67 (under 1897, s. 22).

Paragraph in brackets added by 1897, sched. 1.

12. *An applicant or his nominee shall not be registered as proprietor of leasehold land, until and unless the title to such land is approved by the registrar; and further, if he apply to be registered as proprietor of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, until and unless the lessor, after an examination of his title by the registrar is declared to have had an absolute or qualified title to grant the lease under which the land is held.*

Repealed by 1903, r. 67 (under 1897, s. 22).

13. The registration under this Act of any person as first registered proprietor of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held shall be deemed to vest in such person the possession of the land comprised in the registered lease relating to such land for all the leasehold estate therein described, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows:

- (1.) To all implied and express covenants, obligations, and liabilities incident to such leasehold estate; and
 - (2.) To the incumbrances (if any) entered on the register; and
 - (3.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land; and
 - (4.) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled,
- but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

See 1903, r. 254, *ante*, p. 288.

14. *The registration of any person under this Act as first registered proprietor of leasehold land without a declaration of the title of the lessor shall not affect or prejudice the enforcement of any estate, right, or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall have the same effect as the registration of any person under this Act as first registered proprietor of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held.*

15. *Where an absolute title is required, and on the examination of the title of any lessor by the registrar it appears to him that the title of such lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the registrar may, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register; and a title of a lessor registered subject to such excepted estate, right, or interest is in this Act referred to as a qualified title; and the registration of a person as first registered proprietor of leasehold land with a declaration that the lessor had a qualified title to grant the lease under which the land is held shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the*

1875, ss.
10-16.

land is held, save that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.

18. *On the entry of the name of the first registered proprietor of leasehold land on the register, the registrar shall, if required by the proprietor, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon a statement whether any declaration, absolute or qualified, as to the title of the lessor has been made, and any other particulars relating to such lease entered in the register.*

Ss. 14-16 repealed by 1903, r. 67 (under 1897, s. 22).

1903, rr.
50-67.

Leasehold land.

50. The provisions of the foregoing rules, with regard to applications for registration of freehold land shall apply generally to applications for registration of leasehold land, and any necessary alteration in the forms shall be made accordingly.

51. The lease itself, if in the possession or under the control of the applicant, and in all other cases a copy or abstract, or other sufficient evidence of its contents, shall be delivered with the application.

52. Application may be made for the registration of leasehold land with absolute title, with good leasehold title, or with possessory title.

53. When an absolute title is required no person shall be registered as proprietor of leasehold land until and unless the title both to the leasehold and the freehold, and to any intermediate leasehold that may exist, is approved by the registrar, and, when a good leasehold title is required, no person shall be registered as proprietor of leasehold land until and unless the title to the leasehold interest is approved by the registrar.

54. Where the original lessee is registered as first proprietor, the title may be entered as a good leasehold title on his satisfying the registrar that he has not incumbered or dealt with the land in any way except as disclosed, and no advertisement shall be necessary.

55. The effect of registration of a person as first proprietor of leasehold land with an absolute title shall be that stated in section 13 of the Act of 1875 as the effect of registration with a declaration that the lessor had an absolute title to grant the lease under which the land is held.

56. The registration of a person as first proprietor of leasehold land with a good leasehold title shall not affect or prejudice the enforcement of any estate, right, or interest affecting or in derogation of the title of the lessor to grant the lease, but save as aforesaid shall have the same effect as registration with an absolute title. ^{1903, rr. 50-67.}

57. The registration of a person as first proprietor of leasehold land with a possessory title shall not affect or prejudice the enforcement of any estate, right, or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall have the same effect as registration with an absolute title.

58. Where an absolute title or a good leasehold title to leasehold land is required, and on examination it appears to the registrar that the title, either of the lessor to the reversion, or of the lessee to the lease, can be established only for a limited period, or subject to certain reservations, the registrar may, upon the request in writing of the person applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register, and a title registered, subject to any such exception shall be called a qualified title.

59. The registration of a person as first proprietor of leasehold land with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted, but save as aforesaid shall have the same effect as registration with an absolute title.

60. Where any intermediate leasehold estate exists between the freehold reversion and the leasehold estate which is the subject of registration, the words "lessor" and "lease" in these Rules and in sections 13 and 35 of the Act of 1875, shall be read as including, and also applying to, a sub-lessor and a sub-lease.

61. Where several leases are vested in the same proprietor, they may, on his application in writing, and with the approval of the registrar, be registered under one number, or may be grouped under various numbers as may be considered most convenient for the purpose of saving expense and facilitating future transactions.

62. On the registration of any leasehold land held under a

1903, rr.
50-67.

lease containing a prohibition against alienation without licence, all estates, rights, interests, powers, and remedies under such lease, arising upon, or by reason of, any alienation without licence shall be expressly excepted from the effect of registration.

63. Where a lease affecting land already registered is registered in pursuance of these Rules, notice of the registration thereof shall be given to the registered proprietor of the freehold land or of the superior lease out of which the lease is granted, as the case may be; and if no valid objection be made within 14 days after service of the notice, or if the registered proprietor of the freehold or of the superior lease consents in writing (by himself or his solicitor) to the application, the lease shall be noted against the title to the freehold or to the superior lease in the same manner as notices of leases have to be entered under sections 50 and 51 of the Act of 1875, and these Rules.

64. Where, on the registration of freehold or leasehold land, it appears that there is a lease or sub-lease, as the case may be, already registered affecting the same land, a reference to such lease or sub-lease shall, if the registrar so direct, be entered in the charges register.

65. The provisions as to land certificates of section 10 of the Act of 1875, as amended by section 8 of the Act of 1897, shall apply to leasehold land.

66. When a lease and a reversionary lease to take effect in possession upon, or at any time within one month after, the expiration of that lease, are so held that the beneficial interest under both instruments belongs to, or is in the power or under the control of the same person or persons, such leases, so far as they relate to lands comprised in both instruments, shall be deemed for the purposes of section 11 of the Act of 1875 and of these Rules to create one continuous term.

67. The following portions of the Act of 1875, dealing with the registration of leasehold land, shall be deemed to have been omitted therefrom :

Section 11. From "with the addition" to the word "held" at the end of the paragraph, and from "every applicant," to "the registered lease."

Sections 12, 14, 15, 16. The whole.

Section 34. From "Upon completion" to the end.

Sections 36 and 37. The whole.

Freehold and leasehold land.

1875, s.
17.

17. The examination by the registrar of any title under this Act shall be conducted in the prescribed manner, provided that—

- (1.) Due notice shall be given, where the giving of such notice is prescribed, and sufficient opportunity be afforded to any persons desirous of objecting to come in and state their objections to the registrar; and
- (2.) The registrar shall have jurisdiction to hear and determine any such objections, subject to an appeal to the Court in the prescribed manner and on the prescribed conditions; and
- (3.) If the registrar, upon the examination of any title, is of opinion that the title is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of such title, or may require the applicant to apply to the court, upon a statement signed by the registrar, for its sanction to the registration; and
- (4.) The registrar may accept as evidence recitals, statements, and descriptions of facts, matters, and parties in deeds, instruments, or statutory declarations not less than twenty years old.

References to counsel.

1903, rr.
313-315.

313. The examiners of title for the purposes of these Rules shall be the conveyancing counsel to the High Court, and such other barristers experienced in conveyancing as the Lord Chancellor shall from time to time appoint, and the business referred to them shall be distributed in rotation.

314. Any person may object to the opinion given by any examiner of title, and thereupon the point in dispute shall be decided by the registrar. And he may, if he thinks fit, under special circumstances, direct or transfer a reference to any one in particular of the examiners of title.

315. When, in the course of any proceeding in the registry, a question arises which, in the opinion of the registrar, involves for its determination any special exceptional knowledge of some branch of law which rarely arises for consideration, the registrar may obtain the advice or assistance therein of any competent person whom he may select, and may act upon his opinion.

Unregistered rights in registered land.

1875, s.
18.

18. All registered land shall, unless, under the provisions of this Act, the contrary is expressed on the register, be deemed to be subject to such of the following liabilities, rights, and interests as may be for the time being subsisting in reference thereto, and such liabilities, rights, and interests shall not be deemed incumbrances within the meaning of this Act; (that is to say,)

- (1.) Liability to repair highways by reason of tenure, quit-rents, crown rents, heriots, and other rents and charges having their origin in tenure; and
- (2.) Succession duty, land tax, tithe rentcharge, and payments in lieu of tithes, or of tithe rentcharge; and
- (3.) Rights of common, rights of sheepwalk, rights of way, watercourses, and rights of water, and other easements; and
- (4.) Rights to mines and minerals; and
- (5.) Rights of entry, search, and user, and other rights and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals, or of property in mines or minerals;

[but sub-sections (4) and (5) shall apply only to rights created previously to the registration of the land or the commencement of the Land Transfer Act, 1897;] and

- (6.) Rights of fishing and sporting, seigniorial and manorial rights of all descriptions, and franchises, exerciseable over the registered lands; and
- (7.) Leases or agreements for leases and other tenancies for any term not exceeding twenty-one years, or for any less estate, in cases where there is an occupation under such tenancies:

[This section shall include estate duty, liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and profits à prendre, and, subject to the provisions of the Land Transfer Act, 1897, rights acquired or in course of being acquired under the Limitation Acts.]

Provided as follows:

- (a.) Where it is proved to the satisfaction of the registrar that any land registered or about to be registered is exempt from land tax or tithe rent-

charge, or from payments in lieu of tithes, or of tithe rentcharge, the registrar may notify the fact on the register in the prescribed manner; and

- (b.) The Commissioners of Inland Revenue shall, upon the application of the proprietor of any land registered or about to be registered upon such declaration being made, or such other evidence being produced as the commissioners require, and upon payment of the prescribed fee, grant a certificate that at the date of the grant thereof no succession duty is owing in respect of such land, and the registrar shall in the prescribed manner notify such fact on the register, and such notification shall be conclusive evidence of the fact so notified in respect of succession duty; and
- (c.) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is vested in the proprietor of land registered or about to be registered, the registrar may register such proprietor in the prescribed manner as proprietor of such mines and minerals as well as of the land; and
- (d.) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is severed from any land registered or about to be registered, the registrar may on the application of the person entitled to any such mines and minerals register him as proprietor of such mines and minerals in manner hereafter in this Act mentioned, and upon such registration being effected shall enter on the register of the land a reference to the registration of such other person as proprietor of such mines and minerals.

Where the existence of any such liabilities, rights, or interests, as are mentioned in this section, is proved to the satisfaction of the registrar, the registrar may, if he think fit, enter on the register notice of such liabilities, rights, or interests in the prescribed manner.

[The power conferred on the registrar shall be exercised in all cases where the abstract of title on first registration or on registration as qualified or absolute discloses the existence of any such liabilities as are mentioned in sub-sections (4) and (5).

Where an easement is registered as an incumbrance, the

1875, s.
18. dominant and servient tenements shall be defined, if practicable and required by the parties.

Notice of a power of re-entry and of a right of reverter may be entered on the register under this paragraph.]

Paragraphs in brackets added by 1897, sched. 1.

1897, s.
13. 13.—(1.) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to succession duty and estate duty.

(2.) If, on such application, it appears that there is, or is capable of arising, any such liability to succession duty or estate duty as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3.) Succession duty and estate duty shall not—

(a.) unless so noted on the register; or

(b.) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising; or

(c.) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a bonâ fide registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

1903, rr.
255, 208-
215. 255. Rights, privileges, and appurtenances appertaining or reputed to appertain to land or demised, occupied, or enjoyed therewith or reputed or known as part or parcel of or appurtenant thereto, shall not be deemed incumbrances within the meaning of the Land Transfer Acts, 1875 and 1897.

1903, rr.
208-215.

Notices as to death duties.

208. Where, upon any examination of title, the registrar finds that there is, or may arise, any such liability to death duties as is mentioned in section 13 of the Act of 1897, he shall enter notice thereof in the charges register according to form 55 in the first schedule hereto.

209. Where, on the death of a registered proprietor of land his personal representative is registered as such under rule 183, notice of liability to duty shall not be entered.

210. If the personal representative of a deceased proprietor of land assents to a devise or appropriation, or transfers land to any person otherwise than by sale, notice of the liability to

duty shall be entered unless there is produced to the registrar either 1903, rr.
208-215.

- (a.) Proof to the satisfaction of the registrar that all duty payable in respect of such land by reason of the death of the proprietor has been paid or satisfied; or
- (b.) A certificate from the Commissioners of Inland Revenue in form 56 in the first schedule hereto, or to that effect; or
- (c.) Proof to the satisfaction of the registrar that the applicant is entitled to the land in such a capacity that any liability to duty would not affect a purchaser from him if the land were unregistered.

211. Where a notice of liability to duty has been entered on the register, it shall be cancelled on production of any such evidence as is mentioned in rule 210.

Exemption from land tax, tithe rent charge, and payments in lieu of tithes or of tithe rent charge.

212. Application to notify exemption from land tax, tithe rent charge, and payments in lieu of tithes or of tithe rent charge, shall be made by delivering at the registry the certificate of redemption or other necessary evidence, with a request to notify the exemption in the register. If the registrar is satisfied by sufficient evidence that the claim to such exemption is well founded, he shall notify the fact in the property register.

Mines and minerals vested in the proprietor of the land.

213. Where any mines and minerals have been opened and worked by the proprietor of the land or by his predecessors in title, or by any person claiming under him or them, and it does not appear on the examination of title or from any other source that the ownership of such mines and minerals is vested in any other person, or in any other case where it is proved to the satisfaction of the registrar that the right to any mines and minerals, whether opened and worked or not, is vested in the proprietor, the registrar may cause him to be registered as proprietor of such mines and minerals by adding to the property register a note to the effect that they are included in the registration, and they shall thenceforth be considered as forming part of and subject to the registered title of the land unless otherwise noted in the register.

1903, rr.
208-215.

Severance of mines and minerals from the land.

214. Where it appears from the documents or abstract of title furnished, or from the admission of the proprietor of the land, or from any other source, that all or any of the mines and minerals are severed from the land, the registrar shall enter a note in the property register that such mines and minerals are excepted from the registration.

Notice of the existence of other liabilities, rights, and interests, mentioned in the 18th section of the Act of 1875, as amended by the Act of 1897.

215. Where any person desires to have an entry made in the register against any land of notice of the existence of a quit rent or any other liability, right, or interest mentioned in section 18 of the Act of 1875, as amended by the Act of 1897 (except in respect of death duties and mines and minerals), the application shall be made in writing and shall state the particulars of the entry required to be made. If the applicant is the registered proprietor of the land or the liability, right, or interest has been created by the registered proprietor of the land, and if in either case there is no caution, restriction, or inhibition on the register, the entry shall be made accordingly. In other cases evidence satisfactory to the registrar shall be produced of the existence of the liability, right, or interest. The proprietor of the land, if not the applicant, shall have notice of the application, and the matter shall be proceeded with as the registrar shall direct, and any entry, if made, shall be against the title in the charges register.

Discharge of incumbrances.

1875, s.
19.

19. Where upon the first registration of any freehold or leasehold land, notice of an incumbrance affecting such land has been entered on the register, the registrar shall, on proof to his satisfaction of the discharge of such incumbrance, notify in the prescribed manner on the register by cancelling the original entry or otherwise the cessation of such incumbrance.

[This section shall apply to part discharges.]

Words in brackets added by 1897, sched. 1.

Discharge of incumbrances entered on first registration.

1903, rr.
216-217.

216. Where, upon the first registration of any land, notice of an incumbrance affecting the same has been entered in the register, the cessation of which is required to be notified under section 19 of the Act of 1875, the applicant for such notification shall, if there has been no dealing with or transmission of such incumbrance, produce either the incumbrance with a release or receipt thereon signed by the incumbrancer, or a discharge in the form provided by these Rules. If there has been any dealing with or transmission of the incumbrance, the applicant shall deliver at the registry an abstract showing his title to make the application and prove the same in the usual way, as in cases of examination of title on first registration. Upon production of such document or proof the registrar may notify in the register the cessation of the incumbrance, either by cancelling the original entry thereof, or by noting the fact of its cessation.

217. Where any person has been registered as the proprietor of such an incumbrance as is mentioned in rule 216, the cessation thereof may be notified in the register upon the production of a discharge executed by the registered proprietor thereof.

Determination of leases.

20. The registrar shall, on proof to his satisfaction of the ^{1875, s.} determination of any lease of registered leasehold land, notify ^{20.} in the prescribed manner on the register the determination of such lease.

Determination of a lease.

1903, rr.
218-222.

218. With the consent of the registered proprietor of a lease which has been registered as a leasehold title and of all other persons appearing by the register to be interested, or upon the production of evidence to the satisfaction of the registrar of its determination, and after such notices as he shall think fit, the determination of the lease may be noted on the register and the leasehold title may be closed. Where such lease has been noted as an incumbrance on the superior title, the note shall be cancelled or an entry made that the lease has determined.

219. On the determination of a lease not registered as a

1903, rr.
218-222.

leasehold title but noted in the register as an incumbrance on the superior title, or on the determination of an agreement for a lease so noted, any person interested may apply to have the determination noted in the register. Upon the production of such evidence as shall satisfy the registrar that the lease or agreement has determined, the note thereof in the register shall be cancelled, or an entry made of such determination.

220. Where the proprietor of any land comprised in a leasehold title becomes by any means the proprietor of the land comprised in the title against which the lease is noted as an incumbrance, or where a lease or agreement for a lease, noted as an incumbrance only, is vested in such proprietor, the registrar may, unless the contrary appears, treat the lease as merged, in which case the title shall be closed, or the note shall be cancelled accordingly.

221. Where under rules 218, 219, or 220 an entry is to be made of the determination of a lease or agreement for a lease or a note is to be cancelled, the lease or agreement shall be produced, and marked with notice of the entry and the land certificate of the title closed and the certificates of charge (if any) thereon shall be delivered up and cancelled.

222. When a lease or agreement for a lease has determined as to a part only of the land demised thereby or comprised therein, rules 218, 219, 220, and 221 shall apply so far as circumstances will admit.

Adverse possession.

1875, s.
21.

21. *A title to any land adverse to or in derogation of the title of the registered proprietor shall not be acquired by any length of possession ; but this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of such land at the time when the registration of such first proprietor took place.*

Repealed by 1897, sched. 1.

1897, ss.
11, 12.

11. Section two of the statute of the thirty-second year of the reign of Henry the Eighth, chapter nine, which prohibits sales and other dispositions of land of which the grantor or his predecessor in title has not been in possession for one whole year previously to the disposition being made, is hereby repealed.

12. A title to registered land adverse to or in derogation

of the title of the registered proprietor shall not be acquired ^{1897, ss. 11, 12.} by any length of possession, and the registered proprietor may at any time make an entry or bring an action to recover possession of the land accordingly. Provided that where a person would, but for the provisions of the principal Act or of this section, have obtained a title by possession to registered land, he may apply for an order for rectification of the register under section ninety-five of the principal Act, and on such application the Court may, subject to any estates or rights acquired by registration for valuable consideration in pursuance of the principal Act or this Act, order the register to be rectified accordingly. And provided also, that this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of such land at the time when the registration of such first proprietor took place.

Compulsory registration.

19.—(1.) Where a county council apply in pursuance of ^{1897, ss. 19, 20.} section ten of the Small Holdings Act, 1892, for registration as proprietors of land, they may be registered as proprietors of that land, with any such title as is authorized by the principal Act.

(2.) Where a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Act, 1892, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council.

Part III.

Compulsory registration and insurance fund.

20.—(1.) Her Majesty the Queen may, by Order in Council, declare, as respects any county or part of a county mentioned or defined in the Order, that, on and after a day specified in the Order, registration of title to land is to be compulsory on sale, and thereupon a person shall not, under any conveyance

1897, ss.
19, 20.

on sale executed on or after the day so specified, acquire the legal estate in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land.

(2.) In this section the expression "conveyance on sale" means an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act.

(3.) The title with which a proprietor of freehold land is registered in pursuance of this section shall be not less than a possessory title; but nothing in this section shall prevent any person from being registered with any other title if the registrar is satisfied of his title.

(4.) It shall be lawful for Her Majesty in Council to revoke or vary any Order made under this section.

(5.) In the case of every Order proposed to be made under this section, notice shall, six months before the Order is made, be given to the council of the county to which such Order is proposed to be applied. A draft of the proposed Order, together with the name of at least one place within or conveniently near to the county where a district registry office will be established, shall accompany the notice, and shall also be published in the *Gazette*.

(6.) If within three months after receipt of the draft the county council, at a meeting specially called for the purpose, at which two-thirds of the whole number of the members shall be present, resolve, and communicate to the Privy Council their resolution, that in their opinion compulsory registration of title would not be desirable in their county, the Order shall not be made.

(7.) The first Order made under this section shall not affect more than one county.

(8.) Except as to a county or part of a county which shall have signified through the county council of such county, pursuant to a resolution of such council passed at a meeting at which two-thirds of the whole number of the members shall be present, its desire that registration of title shall be compulsorily applied to it, no further Order shall be made under this section, and in any case no further Order shall be made under this section until the expiration of three years from the making of the first Order. Provided that in the case of an Order made under this sub-section the provisions of sub-section (6) shall not apply.

(9.) Every Order of Council made within thirty days from the date thereof sitting, or within twenty days from the close of the next session, if Parliament be not sitting, be of both Houses of Parliament, and if within forty order being so laid an Address in either House disapproved of such order be carried, such Order shall be void and of no effect.

1875, ss.
22-28.

(10.) Any Order made under this section shall be made with due regard to the utilization (if practicable) of any land registry existing in the county to which compulsory registration is proposed to be applied or in any adjoining county.

(11.) For the purposes of this section the word county shall have the same meaning as in the Local Government Act, 1888, and shall include a county borough; and the word county council shall include the council of such borough.

(12.)—(i.) In the event of any portion of a county or part of a county as regards which an Order has been made under this section being included in another county or in a county borough as regards which no Order has been made under this section, such Order shall cease to be in force within such included portion of the county.

(ii.) In the event of any portion of a county or part of a county as regards which no Order has been made under this section being included in another county or in a county borough as regards which an Order has been made under this section, such Order shall apply to such included portion of the county.

Application to the grant of leases and dealings with leasehold land of the provisions of the Act of 1897 with respect to compulsory registration. 1903, rr. 68-70.

68. An Order in Council, made under section 20, subsection 1, of the Act of 1897, shall, in the absence of anything to the contrary in the Order, extend to sales of leasehold as well as of freehold land, and to grants of leases and underleases.

69. The effect of an Order so made shall be that, as regards land in the county or part of a county comprised in the Order, an assignment on sale of a lease or underlease having at least forty years to run or two lives yet to fall in, and a grant of a lease or underlease for a term of forty years or more, or for two or more lives, executed after the day specified in the Order

1897, ss.
19, 20.

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Removal of land from the register.

1897, s.
17.

17.—(1.) The registered proprietor of land not situated in a district where the registration of title is compulsory, may, with the consent of the other persons (if any) for the time being appearing by the register to be interested therein, and on delivering up the land certificate or office copy of the registered lease and certificates of charge (if any), remove the land from the register.

(2.) After land is removed from the register no further entries shall be made respecting it, and inspection of the register may be made and office copies of the entries therein may be issued, subject to such regulations as may be prescribed.

(3.) If the land so removed from the register is situate within the jurisdiction of the Middlesex or Yorkshire registries named in section one hundred and twenty-seven of the principal Act, it shall again be subject to such jurisdiction as from the date of the removal.

Registered charge.

Part II.

1875, ss.
22-28.

Registered dealings with registered land.

Mortgage of registered land.

22. Every registered proprietor of any freehold or leasehold land may in the prescribed manner charge such land with the payment at an appointed time of any principal sum of money either with or without interest, and with or without a power of sale to be exercised at or after a time appointed. The charge shall be completed by the registrar entering on the register the person in whose favour the charge is made as the proprietor of such charge, and the particulars of the charge, and of the power of sale, if any; the registrar shall also, if required, deliver to the proprietor of the charge a certificate of charge in the prescribed form.

[Charges created under this section are subject to the provisions of this Act in respect of qualified or possessory titles.]

Paragraph in brackets added by 1897, sched. 1.

23. Where a registered charge is created on any land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge to pay the principal sum charged, and interest, if any, thereon, at the appointed time and rate; also a covenant, if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

24. Where a registered charge is created on any leasehold land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge, that the person being registered proprietor of such land at the time of the creation of the charge, his executors, administrators, and assigns, will pay, perform, and

1875, ss.
22-28.

observe the rent, covenants, and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed, and observed, and will keep the proprietor of the charge, his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rent, or any part thereof, or the breach of the said covenants or conditions, or any of them.

25. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may, for the purpose of obtaining satisfaction of any moneys due to him under the charge, at any time during the continuance of his charge, enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior incumbrancers, and to the liability attached to a mortgagee in possession.

26. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may enforce a foreclosure or sale of the land charged, in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a proviso for redemption on payment of the money named at the appointed time.

27. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge with a power of sale may, at any time after the expiration of the appointed time, sell and transfer the land on which he has a registered charge, or any part thereof, in the same manner as if he were the registered proprietor of such land.

28. Subject to any entry to the contrary on the register, registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created.

The registrar shall, on the requisition of the registered proprietor of any charge, or on due proof of the satisfaction thereof, notify on the register in the prescribed manner by cancelling the original entry or otherwise the cessation of the charge, and thereupon the charge shall be deemed to have ceased.

[This section shall apply to part discharges.]

Words in brackets added by 1897, sched. 1.

Charges.

1903, rr.
158-167,
169-182.

158. A charge on registered land shall be made by an instrument in form 44 in the first schedule hereto, and a copy of the instrument of charge shall be delivered with it.

159. The registration of an instrument of charge negating or modifying the provisions of sections 23 to 27 of the Act of 1875, or any of them, shall for the purposes of those sections be deemed a sufficient negative or contrary entry on the register.

160. A charge to secure an annuity or to secure future advances shall be made by an instrument in form 45 or 46 respectively in the first schedule hereto, and forms 45 or 46 may be combined with form 44.

161. On the registration of a charge created by a company registered under the Companies Acts, 1862 to 1900, there shall be produced to the registrar either a certificate under section 14 of the Companies Act, 1900, that it has been registered under that section, or a certificate under the seal of the company or signed on their behalf by their solicitor that the charge was not created for the purpose of securing any issue of debentures. If no such certificate is produced, a note shall be made in the register that the charge is subject, if and so far as created for the purpose of securing any issue of debentures, to the provisions of section 14 of the Companies Act, 1900.

162. Where part only of the land comprised in a title is included in a charge, the part so charged shall (subject to the provisions of rule 101) be identified by a plan, which shall be signed by the person making the charge and by or on behalf of the person in whose favour the charge is made.

163. Where it appears from a charge that the money secured is advanced by two or more persons but not on joint account, they shall be entered either as joint proprietors of the charge as a whole, or as proprietors as tenants in common, according to their intention appearing in the charge or in writing under their hands. If no such intention appears, they shall be entered as tenants in common.

164. When the proprietor of a registered charge obtains an order for foreclosure absolute, the order, or an office copy thereof, shall be delivered to the registrar, who shall thereupon enter the proprietor of the charge as proprietor (subject to prior charges) of the land the equity of redemption in which is foreclosed. The certificate of charge, and if required by the registrar, the land certificate, shall accompany the application.

1903, rr.
152-167,
169-182.

165. An application to alter the terms of a registered charge under section 9, sub-section 5, of the Act of 1897 shall be in form 47 in the first schedule hereto, and shall be executed by the registered proprietors of the charge and of the land and of every charge of equal or inferior priority prejudicially affected by the alteration.

166. A discharge wholly or in part of a registered charge shall be made by an instrument in form 48 in the first schedule hereto and shall be signed by the registered proprietor of the charge. But the registrar shall be at liberty to accept and act upon any other proof of satisfaction of a charge which he may deem sufficient.

167. When all moneys intended to be secured by any mortgage or charge to or in favour of any building society, friendly society (including a branch society), or industrial and provident society have been fully paid or satisfied, an instrument of discharge in the form provided by these Rules, under the seal of such society if incorporated, or under the hands and seals of the trustees for the time being of or acting in that manner for such building or friendly society, or other the proper officers thereof, if such society is not incorporated, and attested by the secretary; or under the hands and seals of two members of the committee of an industrial and provident society, if unincorporated, and attested by the secretary; shall have the same effect and operation in vacating the mortgage or charge, and in vesting the estate, and otherwise, as a receipt indorsed on such mortgage or charge, duly made, signed, and attested in such form and manner and by such persons as is prescribed by, and otherwise in conformity with the provisions of section 5 of 6 and 7 Will. IV. cap. 32; section 42 of the Building Societies Act, 1874; section 43 of the Industrial and Provident Societies Act, 1893; and section 53 of the Friendly Societies Act, 1896, respectively.

rr. 169-
182.

168. Where a charge, whether affecting the whole or a part of the land comprised in a title, reserves the right to consolidate, it shall not on that account only be registered against any other land than that expressly described in it. But where the right reserved is to consolidate with a specified charge, or an application in writing is made to register the right in respect of a specified charge, the registrar shall require the production of the land certificates of all the titles affected, and, on the production thereof, shall enter in the register a notice that the specified charges are consolidated.

170. Every land charge shall be deemed to be created by

the person registered as proprietor of the land at the date of the charge, and shall be capable of registration accordingly; but in the case of such a charge being registered, the covenants by the proprietor of the land under sections 23 and 24 of the Act of 1875 shall not be implied, and the proprietor of the charge shall not by virtue of such registration be entitled to any rights under sections 25, 26 or 27 of that Act to which he would not otherwise have been entitled.

171. In order to prevent a security for moneys presently raisable under a puisne charge gaining priority by earlier registration over a security for moneys raisable at a future time under a paramount charge (as, for instance, when moneys are raised under a later portions term, while moneys raisable under an earlier portions term are still unraised), it shall be the duty of a registered proprietor charging settled land under section 6, sub-section 7, of the Act of 1897 to note on the instrument of charge the existence of any prior term or power under which moneys have to be raised which will, when raised, have priority over the moneys secured by the puisne charge, referring to the instrument creating the term or power and stating in the note in general terms the amount raisable thereunder (for instance, "the sum of £5,000, and the costs of raising the same"). The note so made shall be entered in the register.

172. When a person registers a charge which he alleges to have, under or by virtue of some statute, priority over other charges upon the same land of earlier date, he shall (unless the charge contains such a statement) state in writing under what statute or statutes such priority is claimed; and an entry shall be made in the register that a claim is made by the registered proprietor of the charge that it has priority under the statute or statutes referred to, and that it does not (as between itself and other registered charges of earlier date) rank according to the date of its creation, or to the order of entry in the register.

173. If and when it becomes important to determine whether such claim to priority is well founded, any person interested may apply to the registrar to determine the question in accordance with these Rules: and the registrar may either himself determine all questions as to the priorities and relative rights of the parties; or may require the matter to be brought before the Court for decision: and the result of the decision shall be entered in the register, and any necessary alterations shall be made therein.

1903, rr.
169-182.

174. The provisions of rules 151 and 157 with respect to registered land, shall apply, with the necessary modifications, to a registered charge.

See pp. 324, 382.

Adaptation to incumbrances prior to registration and to sub-mortgages of the provisions of the Act of 1875 with regard to charges.

175. Where it appears that any person is entitled to an incumbrance created prior to the first registration of land, the registrar shall, on the application or with the consent of the person so entitled and on due proof of his title and after notice to the registered proprietor of the land, register such person as the proprietor of such incumbrance; but, where there are several such incumbrances, their relative priorities shall not be affected by the registration of some or one of them only, or by the order in which such of them as are registered are entered in the register.

176. From and after the registration of the proprietor of an incumbrance, all transfers and other dispositions thereof or thereunder shall be entered in the register and shall (subject to any entry to the contrary in the register) rank, as between themselves, for purposes of priority in the order in which they are registered; and the incumbrance shall cease to be subject to the jurisdiction of any local deed registry.

177. The same forms shall be used and proceedings adopted as to transfers and other dispositions of or under incumbrances so registered as are required in the case of registered charges.

178. The registered proprietor of a charge or incumbrance may at any time charge the same with the payment of money in the same manner as the registered proprietor of land can charge the land.

179. Such a charge shall be called a sub-charge and shall be completed, transferred, and discharged in the same form and manner as a charge. Subject to any entry in the register to the contrary, a sub-charge shall as against the person creating it imply the same covenants and, as against that person and all persons over whose interests the charge confers power, shall confer the same powers as a charge. Subject to any entry to the contrary in the register, registered sub-charges on the same charge or incumbrance shall, as between themselves, rank according to the order in which they are entered on the

register and not according to the order in which they are created. 1903, rr. 169-182.

180. On the registration of a sub-charge the certificate of charge or incumbrance shall be produced and endorsed with a note thereof.

181. Certificates of incumbrance and of sub-charge shall be prepared in like forms and be issued and dealt with and may be used to create a lien by deposit in the same manner as certificates of charge. They shall be produced on the same occasions and their production may be dispensed with on the same terms as certificates of charge.

Transfer and Discharge.

182. A transfer of land combined with a discharge of a charge or incumbrance shall be made by an instrument in form 50 in the first schedule hereto.

Registered transfer.

Transfer of freehold land.

1875, ss. 29-39.

29. Every registered proprietor of freehold land may, in the prescribed manner, transfer such land or any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Upon completion of the registration of the transferee the registrar shall, if required, deliver to him a land certificate in the prescribed form; he shall also, in cases where part only of the land is transferred, if required, deliver to the transferor a land certificate, containing a description of the land retained by him.

30. A transfer for valuable consideration of freehold land registered with an absolute title shall, when registered, confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:

- (1.) To the incumbrances, if any, entered on the register;
and
- (2.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances,

1875, ss.
29-30.

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

[In the absence of anything to the contrary in the register, or in the transfer, the word "land" in this section includes the mines and minerals if parcel thereof.]

Words in italics repealed by S. L. Rev. (No. 2) Act 1893.

Paragraph in brackets added by 1897, sched. 1.

31. A transfer for valuable consideration of freehold land registered with a qualified title shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.

[In the absence of anything to the contrary in the register, or in the transfer, the word "land" in this section includes the mines and minerals if parcel thereof.]

Paragraph in brackets added by 1897, sched. 1.

32. A transfer for valuable consideration of freehold land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall when registered have the same effect as a transfer for valuable consideration of the same land registered with an absolute title.

[In the absence of anything to the contrary in the register, or in the transfer, the word "land" in this section includes the mines and minerals if parcel thereof.]

Paragraph in brackets added by 1897, sched. 1.

33. A transfer of freehold land made without valuable consideration shall, so far as the transferee is concerned, be subject to any unregistered estates, rights, interests, or equities subject to which the transferor held the same, but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, have the same effect as a transfer of the same land for valuable consideration.

[In the absence of anything to the contrary in the register, or in the transfer, the word "land" in this section includes the mines and minerals if parcel thereof.]

Paragraph in brackets added by 1897, sched. 1.

Transfer of leasehold land.

1875, ss.
29-39.

34. Every registered proprietor of leasehold land may, in the prescribed manner, transfer the whole of his estate in such land or in any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease ; but if a part only is transferred, the registrar shall, if required, according to any agreement that may have been entered into between the transferor and transferee, deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing by endorsement or otherwise the parcels of which the person to whom such copy is delivered is the registered proprietor.

Paragraph in italics repealed by 1903, r. 67. (under 1897, s. 22).

35. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held shall, when registered, be deemed to vest in the transferee the possession of the land transferred for all the leasehold estate described in the registered lease relating to such land, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows :

- (1.) To all implied and express covenants, obligations, and liabilities incident to such estate ; and
- (2.) To the incumbrances (if any) entered on the register ; and
- (3.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land ;

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors.*

[In the absence of anything to the contrary in the register,

1903, rr.
68-70.

and capable of registration, shall operate only as an agreement and shall not pass any legal estate to the assignee or lessee unless or until he is registered as proprietor of the lease or underlease. But where the assignees or lessees shall be the trustees of a settlement for the purposes of the Settled Land Act, 1882 to 1890, or any of them, nothing in this rule shall prevent the legal estate in the land from passing to the trustees, provided the tenant for life or the person having the powers of a tenant for life under the settlement be registered as proprietor of the land comprised in the assignment or lease within one calendar month from the date thereof, or within such further time as the registrar shall allow.

70. The expressions "assignment" and "grant of a lease or underlease" in rule 69 shall apply to any instrument by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of leasehold land may be made.

Removal of land from the register.

1897, s.
17.

17.—(1.) The registered proprietor of land not situated in a district where the registration of title is compulsory, may, with the consent of the other persons (if any) for the time being appearing by the register to be interested therein, and on delivering up the land certificate or office copy of the registered lease and certificates of charge (if any), remove the land from the register.

(2.) After land is removed from the register no further entries shall be made respecting it, and inspection of the register may be made and office copies of the entries therein may be issued, subject to such regulations as may be prescribed.

(3.) If the land so removed from the register is situate within the jurisdiction of the Middlesex or Yorkshire registries named in section one hundred and twenty-seven of the principal Act, it shall again be subject to such jurisdiction as from the date of the removal.

Registered charge.

Part II.

1875, ss.
22-28.

Registered dealings with registered land.

Mortgage of registered land.

22. Every registered proprietor of any freehold or leasehold land may in the prescribed manner charge such land with the payment at an appointed time of any principal sum of money either with or without interest, and with or without a power of sale to be exercised at or after a time appointed. The charge shall be completed by the registrar entering on the register the person in whose favour the charge is made as the proprietor of such charge, and the particulars of the charge, and of the power of sale, if any; the registrar shall also, if required, deliver to the proprietor of the charge a certificate of charge in the prescribed form.

[Charges created under this section are subject to the provisions of this Act in respect of qualified or possessory titles.]

Paragraph in brackets added by 1897, sched. 1.

23. Where a registered charge is created on any land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge to pay the principal sum charged, and interest, if any, thereon, at the appointed time and rate; also a covenant, if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

24. Where a registered charge is created on any leasehold land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge, that the person being registered proprietor of such land at the time of the creation of the charge, his executors, administrators, and assigns, will pay, perform, and

1897, s.
16.

registered as proprietor of the land or of a charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a transfer from the registered proprietor to the purchaser.

(3.) In the absence of special stipulation, a vendor of land registered with an absolute title shall not be required to enter into any covenant for title, and a vendor of land registered with a possessory or qualified title shall only be required to covenant against estates and interests excluded from the effect of registration, and the implied covenants under section seven of the Conveyancing and Law of Property Act, 1881, shall be construed accordingly.

1903, rr.
126-150,
257, 152-
157.

Transfers of Land.

126. A transfer of the whole of the land comprised in a title shall be made by an instrument in form 20 in the first schedule hereto.

127. A transfer of part of the land comprised in a title shall be made by an instrument in form 21 in the first schedule hereto, and shall also (subject to the provisions of Rule 101) be accompanied by a plan showing the land transferred: and the plan shall be signed by the transferor and by or on behalf of the transferee.

128. A transfer of land to the uses of a settlement shall be made by an instrument in one of the forms 22 to 27 in the first schedule hereto, with the addition of the proper restrictions to be entered in the register, according to the principles stated in rule 80, and the registrar shall, on receipt thereof, register the transferee named therein as the proprietor of the land, and shall enter in the register the restrictions contained in the transfer.

129. Where registered land has been brought into settlement, and the existing registered proprietor is the tenant for life under the settlement, and elects to remain the registered proprietor, he must apply for the registration of a restriction in form 6 or form 7 in the first schedule hereto, or such other restriction as may be required having regard to the terms of the settlement and the Settled Land Acts.

130. A transfer of land in consideration or partly in consideration of a rent may be made by the registered proprietor

of land by an instrument in any form legally sufficient for the purpose of which the registrar may approve. The transferee shall be registered as the proprietor of the land, and the rent shall be entered in the charges register, as an incumbrance. Such evidence as the registrar may require that the registered proprietor has power to transfer in consideration of a rent shall be furnished.

131. The transferor shall be registered as the proprietor of the rent under a separate title, and a reference to that title shall be made in the title of the transferee.

132. On a transfer of freehold land subject to an existing rent, covenants similar to those implied by section 39 of the Act of 1875 on a transfer of leasehold land shall be implied, but such implication may be negatived by adding suitable words to the instrument of transfer as in form 35 in the first schedule hereto, and in that case a note thereof shall be entered in the register. If it is desired to substitute modified covenants for the covenants implied by this rule, the necessary additions may be made to the transfer.

133. On a transfer of land subject to a charge or other incumbrance appearing on the register, or, in the case of a possessory or qualified title, an incumbrance not affected by the registration, covenants by either party to pay the money owing and to indemnify the other party may be added to the instrument of transfer and may be noted on the register.

134. A transfer of land without the mines and minerals shall be made by an instrument in form 28 in the first schedule hereto. A transfer of land with certain specified mines and minerals shall be made by an instrument in form 29 in the first schedule hereto. A transfer of land with the mines and minerals, except certain specified mines and minerals, shall be made by an instrument in form 30 in the first schedule hereto. The transferee shall be registered as proprietor of the land, with a note to the effect that the mines and minerals (or that the mines and minerals other than certain specified mines and minerals; or that certain specified mines and minerals, as the case may be) are excepted. The transferor shall, if entitled to the excepted mines and minerals, be registered as the proprietor thereof, with an absolute, qualified, good leasehold, or possessory title, according to the circumstances of the case.

135. A transfer of mines and minerals without the land shall be made by an instrument in form 31 in the first schedule hereto. A transfer of certain specified mines and minerals

1903, rr.
126-150,
257, 152-
157.

without the land shall be made by an instrument in form 32 in the first schedule hereto. A transfer, without the land, of the mines and minerals, except certain specified mines and minerals, shall be made by an instrument in form 33 in the first schedule hereto. The transferee shall be registered as the proprietor of the mines and minerals transferred, with an absolute, qualified, good leasehold, or possessory title, according to the circumstances of the case: and a note shall be entered against the transferor's title to the effect that the mines and minerals (or that certain specified mines and minerals; or that the mines and minerals other than certain specified mines and minerals, as the case may be) have been transferred.

136. Where part only of the land or of the mines and minerals under the land comprised in one title is transferred forms 28 to 33 may be modified accordingly.

137. A transfer of land in exercise of a power of sale contained in a registered charge shall be made by an instrument in form 34 in the first schedule hereto.

138. A transfer of leasehold land shall be made by an instrument in form 35 in the first schedule hereto, and all or any of the covenants implied by section 39 of the Act of 1875 on a transfer of leasehold land may, if it is desired, be negatived by adding suitable words to the instrument of transfer, and in that case an entry negativing the implied covenants shall be entered in the register. If it is desired to substitute modified covenants for the covenants implied by section 39, the necessary additions may be made to the transfer.

139. On a transfer of part of the land held under a lease, the covenant implied on the part of the transferee by section 39 of the Act of 1875 shall be limited to the payment of the apportioned rent (if any) and the performance and observance of the covenants by the lessee and conditions in the registered lease so far only as they affect the part transferred. Where the transferor remains owner of part of the land comprised in the lease, there shall also be implied on his part a covenant with the transferee similar to that implied on the part of the transferee under section 39 of the Act of 1875 as modified by this rule.

The above covenants may, if it is desired, be modified or negatived by adding suitable words to the instrument of transfer; and a note shall be made in the register.

140. A transfer for valuable consideration of leasehold land

registered with an absolute or qualified title shall, when registered, have the effect given by section 35 of the Act of 1875 to such a transfer of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held: save that, where any estate, right, or interest is excepted from the effect of registration, the transfer shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be so excepted. 1903, rr. 126-150, 257, 152-157.

141. A transfer for valuable consideration of leasehold land registered with a good leasehold title shall, when registered, have the effect given by section 35 of the Act of 1875 to such a transfer of land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that it shall not affect or prejudice the enforcement of any estate right or interest affecting or in derogation of the title of the lessor to grant the lease.

142. A transfer for valuable consideration of leasehold land registered with a possessory title shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that the transfer shall not affect or prejudice the enforcement of any right or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor.

143. The provisions as to land certificates of section 29 of the Act of 1875, as amended by section 8 of the Act of 1897, shall apply to leasehold land.

144. A transfer of land to an incorporated company or other corporation, sole or aggregate, shall be made by an instrument in form 36 in the first schedule hereto, and shall refer to the licence in mortmain or statute enabling the corporation to acquire or hold the land; and if the licence or statute contains any limit to the extent of land which may be acquired or held, or any provisions as to the purposes for which it may be used, a statement showing that the land transferred, together with any land already acquired or held under such licence or statute, does not exceed such limit, and, showing also the purposes for which the land is to be used, shall be added. Such statement shall be proved by statutory declaration or otherwise, as the registrar may direct. But a transfer of land from the Ecclesiastical Commissioners to an incumbent or other ecclesiastical corporation shall be exempt from the provisions of this rule.

1903, rr.
126-150,
257, 152-
157.

145. A transfer of land for charitable uses within the meaning of the Mortmain and Charitable Uses Act, 1888, shall, except in cases exempted by section 7, sub-section (i.), of the said Act, be made by an instrument in form 37 in the first schedule hereto, and shall refer to the statute or other authority under which it is made; and where such statute or authority contains any limit to the extent of land which may be acquired or held, or any provisions as to the purposes for which it is to be used, a statement showing that the land transferred, together with any land already acquired or held under such licence or statute, does not exceed such limit, and showing also the purposes for which the land is to be used, shall be added. Such statement shall be proved, by statutory declaration or otherwise, as the registrar may direct.

146. A transfer of land under rule 144 or rule 145 shall not be registered until the registrar is satisfied that such transfer is in accordance with the law relating to mortmain or charitable uses. And where it shall appear to the registrar that a right of pre-emption, or reverter, or restrictive condition, or a restriction on alienation by the transferee, or any other like right or restriction exists, or may arise, he shall enter notice of any such right or conditions, or a restriction or inhibition protecting any such right, condition, or restriction on alienation or otherwise, in such manner and form as he shall think fit.

147. Where under or by virtue of any Act of Parliament a conveyance to the Ecclesiastical Commissioners would have the effect of vesting any land, either immediately or at a subsequent time, in an incumbent or any other ecclesiastical corporation sole and his successors, the registrar may, on production of a transfer to the ecclesiastical commissioners, together with a certificate by them in form 38 in the first schedule hereto, or to the like effect, enter such incumbent, or other ecclesiastical corporation, and his successors, as registered proprietor.

148. When under or by virtue of the New Parishes Acts, 1843 to 1884, any land would upon the creation of a new parish become vested in an incumbent and his successors, and rule 147 shall be inapplicable, the registrar may on production of the land certificate, and the consent of the registered proprietor of the land, and of a certificate by the Ecclesiastical Commissioners, in form 39 in the first schedule hereto, or to the like effect, enter such incumbent as registered proprietor. If the registered proprietor refuses to give his consent, or his

consent can only be obtained after undue delay or expense, the registrar may, after due notice under these Rules to the proprietor, and such further evidence (if any) as he may deem sufficient, make the entry without production of the consent. ^{1903, rr. 126-150, 257, 152-157.}

149. Where by a scheme of the Ecclesiastical Commissioners and an Order in Council ratifying the same, or other instrument taking effect on publication in the *London Gazette* made under and pursuant to the provisions of any Act of Parliament relating to or administered by the Ecclesiastical Commissioners, or by any conveyance authorized by any such Act, any land shall be expressed or declared to be transferred or vested to or in the Ecclesiastical Commissioners, or to or in any ecclesiastical corporation, aggregate or sole, or any person, and it shall be necessary or deemed desirable by the Ecclesiastical Commissioners to enter the transferee on the register, the registrar may, on production of the land certificate, and the consent of the registered proprietor of the land and of a certificate by the Ecclesiastical Commissioners in form 40 in the first schedule hereto, or to the like effect, and of the King's printer's copy of the *Gazette* containing such publication, enter such ecclesiastical corporation or the Ecclesiastical Commissioners, or such person, as registered proprietor. The consent of the registered proprietor to the scheme, testified by his signing or sealing the same, shall be a sufficient consent for the purposes of this rule, and the King's printer's copy of the *Gazette* containing it shall be sufficient evidence of such consent.

150. The Official Trustee of Charity Lands may be registered as proprietor of land (subject to a restriction in form 13 in the first schedule hereto) on the production of the following evidence, namely (1) Where the administering trustees of a charity are registered as proprietors of the land, on the production of an official copy of an order of the Court or an order of the Charity Commissioners vesting the land in him. (2) Where the administering trustees are not so registered, on the production of a transfer to them, and (a) an official copy of an order of the Court, or (b) an order of the said Commissioners vesting the land in him. He may likewise be so registered on an application showing that under some statute the land is vested in him, and the production of evidence that the requirements of such statute have been complied with. In all cases the application shall be accompanied by the land certificate.

1903, r.
257.

257. Where the Official Trustee of Charity Lands has been registered as proprietor of leasehold land, he shall continue to have all such immunity (if any) from liability under the registered lease as is conferred on him by the Charitable Trusts Acts, 1853 to 1891.

rr. 152-
157.

152. On a disposition by a mortgagee or other person under or by virtue of any estate, right, interest, or power, not affected by the registration, or entered as an incumbrance prior to registration, the registrar may dispense with the production of the land certificate.

153. A transfer of land with restrictive conditions annexed thereto under section 84 of the Act of 1875, as amended by the Act of 1897, shall be made by an instrument in form 41 in the first schedule hereto.

154. Where any registered land is exchanged for other registered land, the exchange shall be made by an instrument in form 42 in the first schedule hereto.

155. Where an exchange is made under an order or award of the Board of Agriculture, the production of such an order or award, or a sealed copy thereof, together with the land certificate, shall be a sufficient authority to the registrar to make such entries and alterations in the register as are required to complete the exchange.

If the lands to be exchanged are not in the same condition with regard to registration—as, for instance, if one estate is registered with absolute title and the other with possessory title, or if one estate is subject to incumbrances and the other is not, or is subject to different incumbrances, or if one estate is already on the register and the other is not—the registrar shall carry out the order or award in such manner as may be best calculated to give effect in the register to the provisions of the Inclosure Acts and Tithe Acts in regard to exchanges or any similar provision for the time being in force.

156. A partition shall be made by an instrument in form 43 in the first schedule hereto, and where a partition is made by order of the Board of Agriculture, proceedings analogous to those above provided in the case of exchanges shall be adopted.

157. (1) Upon the joint application in writing of the registered proprietor, and of an intended purchaser of part of the land comprised in a title accompanied by an instrument of transfer (executed as or as in the nature of an escrow by all necessary parties) the intended transferee may be provisionally registered as proprietor; and in such case a land certificate

may be issued to the transferor showing the intended transferee as registered proprietor of the land mentioned in the instrument of transfer; but nevertheless during a period to be specified in the application (but not exceeding 21 days from the date thereof) such registration shall, subject as hereinafter provided, be deemed to be provisional only, and liable to cancellation under this rule; and unless completed as hereinafter provided such registration shall not be deemed to be registration within the meaning of sections 29 and 34 of the Act of 1875.

(2) At any time before the registration has been completed, the provisional registration may be cancelled and the instrument of transfer returned to the transferor upon (i) the delivery of the land certificate to the registrar to be cancelled, and (ii) the production of a statutory declaration by the transferor to the effect that any consideration expressed to be paid or given for the transfer has not been paid or given, and (iii) the service of such notices as the registrar shall think fit.

(3) If such registration shall not have been cancelled then on the expiration of the period specified in the application (or sooner, on the production of the land certificate accompanied by the written application of the transferee or any person claiming under him for the registration to be immediately completed) the registration shall be completed and take effect as of the day on which and of the priority in which the application for provisional registration was delivered to the registry, and the instrument of transfer shall be deemed to have taken effect accordingly.

(4) Pending the completion of the registration the registrar shall make such provisional entries in the books kept in the registry as he shall deem necessary.

This rule applies also to charges : r. 174, p. 312.

Transfer of charges.

1875, s.
40.

40. The registered proprietor of any charge may, in the prescribed manner, transfer such charge to another person as proprietor. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the charge transferred; the registrar shall also, if required, deliver to the transferee a fresh certificate of charge, but the transferor shall be deemed to remain proprietor of such charge until the name of the transferee is entered on the register in respect thereof.

1875, s.
40.

[A registered transferee for value of a charge, and his successors in title, shall not be affected by any irregularity or invalidity in the original charge itself, of which the transferee was not aware when it was transferred to him.]

Paragraph in brackets added by 1897, sched. 1.

1903, r.
168.

168. A transfer of a charge shall be made by an instrument in form 49 in the first schedule hereto.

Registered dispositions generally.

1897, s. 9.

9.—(1.) The provisions of section eight of the Conveyancing and Law of Property Act, 1881, shall apply, so far as applicable thereto, to transfers of registered land as though such transfers were made by deed, and a transfer of land made by the proprietor of a registered charge with power of sale shall operate as a conveyance in professed exercise of the power of sale conferred by the said Act.

(2.) The provisions of sections nineteen, twenty, twenty-one (except sub-sections one and four), twenty-two, twenty-three, and twenty-four of the same Act, shall similarly apply to registered charges.

(3.) Every registered proprietor of land may in the prescribed manner charge it with an annuity or other periodical payment, and the provisions of the principal Act and this Act with regard to charges shall apply to any such charge. Every registered proprietor of land may charge it, in favour of a building society under the Building Societies Acts, by means of a mortgage made in pursuance of or consistent with the rules of that society, and the mortgage shall be deemed a charge made in the prescribed manner, and shall be registered accordingly.

(4.) Nothing contained in any charge shall (i) take away from the registered proprietor thereof the power of transferring it by registered disposition or of requiring the cessation thereof to be noted on the register, or (ii) affect any registered dealing with land or a charge in respect of which the charge is not expressly registered or protected, in accordance with the principal Act and this Act.

(5.) The registrar may, on the application, or with the consent, of the registered proprietor of the land, and of the proprietors of all registered charges (if any) of equal or inferior priority, alter the terms of a charge.

(6.) Where a person on whom the right to be registered as

proprietor of land or of a charge has devolved by reason of the death or bankruptcy of the registered proprietor, or has been conferred by an instrument of transfer or charge, in accordance with the principal Act and this Act, desires to transfer or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions. Subject to the provisions of the principal Act with regard to registered dealings for valuable consideration, a transfer or charge so made shall have the same effect as if the person making it were registered as proprietor.

Transfer or Charge prior to registration.

1903, rr.
96-125.

96. Where a person having the right to apply for registration as first proprietor of land desires to transfer or charge the land before he is himself registered as proprietor, he may do so in the manner, and subject to the conditions, which would be applicable if he were in fact the registered proprietor.

Subject to any prior rights obtained by registration under the Acts and Rules, a transfer or charge so made shall, when completed by registration, have the same effect as if the person making it were registered as proprietor.

Provided that a charge shall not be accepted for registration until an application has been made for the registration of the land to which it relates, and if the application for registration of the land is subsequently refused, or withdrawn, or abandoned, the registration of the charge shall be annulled.

Part III.

Registered Dealings with Registered Land.

As to registered dispositions generally.

i. Form.

97. The forms in the first schedule hereto shall be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions, if any, as are necessary or desired and the registrar allows.

98. Instruments for which no form is provided or to which the scheduled forms cannot conveniently be adapted, shall be in such form as the registrar shall direct or allow, the scheduled forms being followed as nearly as circumstances will permit.

1903, rr.
96-125.

99. For the purpose of introducing the implied covenants under the Conveyancing and Law of Property Act, 1881, a person may, in a registered disposition, be expressed to execute, transfer, or charge as beneficial owner, as settlor, as trustee, as mortgagee, as personal representative of a deceased person, as committee of a lunatic so found by inquisition, or under an order of the Court: and an instrument of transfer or charge, and any instrument affecting registered land, or a registered charge, may be worded accordingly, but no reference to such implied covenants shall be entered in the register.

100. If it appears to the registrar that any instrument or entry proposed to be entered or made in the register is improper in form or in substance, or is not clearly expressed, or does not indicate with sufficient precision the particular interest or land which it is intended to affect, or refers only to matters which are not the subject of registration under the Acts, or, being a condition, does not run with the land, or is not capable of being legally annexed thereto, or of affecting assigns by way of notice, or being a restriction, is unreasonable or calculated to cause inconvenience, or is otherwise expressed in a manner inconsistent with the principles upon which the register is to be kept, he may decline to enter the same in the register, either absolutely, or without such modifications therein as he shall approve; or he may himself with the applicant's consent, settle the form of the entry to be made.

101. An instrument dealing with part of the land comprised in a title may, where such part is clearly defined on the filed plan of the land, define it by reference to that plan instead of by means of an accompanying plan.

102. Lands included in more than one title may be included in one disposition.

103. Where, under or by virtue of any statute, or other sufficient authority, a public body, corporation, company, or society is empowered or required to take conveyances or mortgages or to execute deeds and instruments in any particular form or style, all transfers and other instruments requiring registration may be adapted to such form and style, and for that purpose the scheduled forms may be modified in such manner as the registrar may from time to time direct or approve. Where the form prescribed by the statute or authority names no definite transferee the entry in the register may be adapted to the form.

104. An instrument executed under section 9, sub-section 6, of the Act of 1897, or under rule 96, by a person entitled to be

registered as proprietor of land, or of a charge, before he has ^{1903, rr.} been registered as such, shall be in the same form as is re-^{96-125.} quired for a disposition by the registered proprietor with such modification, if any, as may be necessary to define clearly the land affected. But no registration of such instrument shall be made until the person executing the same has been registered as proprietor, or his right to be so registered has been shown to the satisfaction of the registrar.

105. Where such an instrument as is mentioned in rule 104 deals with a portion of the land comprised in a title, or with a charge not yet entered in the register, the form may be varied so far as may be necessary to identify the land or charge dealt with.

106. Where a disposition of land is about to be made which cannot be registered without the consent of some other person being obtained, such consent may be given by the instrument of disposition; which must in that case be executed by the person giving the consent.

ii. Execution and Attestation.

107. Every instrument of transfer, charge, exchange, or partition of registered land, or of any registered charge on land, including any alteration of a charge, shall; and, if the parties desire it, any other instrument required to be in writing may; be executed as a deed.

108. Every instrument required to be executed as a deed shall be attested.

109. Every instrument required by these Rules to be attested shall be executed in the presence of a witness, who shall sign his name, and add his address, and description.

110. If any instrument is executed by attorney, the power of attorney, or an office copy thereof shall be produced to the registrar; and, in cases not falling within sections 8 and 9 of the Conveyancing Act, 1882, evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the registrar that the principal was alive at the time of the execution of the instrument and that the power was then unrevoked, shall also be produced; and the original power of attorney shall be filed, either at the Central Office or in the registry.

iii. Registration.

111. Where instruments or applications are delivered at the registry with the proper inland revenue and land registry

1903, rr.
96-125.

fee stamps affixed thereto or impressed thereon, accompanied when necessary by the land certificate or certificate of charge, as the case may be, they shall be examined by an officer of the registry, and if certified by him as capable of registration, they shall be entered in a book in the order in which they are delivered. The registration shall then be completed as of the day on which, and, in the absence of direction or inference to the contrary in or from the instruments or applications themselves, of the priority in which the instruments or applications were delivered.

112. Where two or more instruments or applications relating to the same land or to the same charge are delivered at the same time by the same person, they shall rank, for the purposes of priority, in such order as may be directed by, or inferred from, the instruments or applications, and in default, as may be required in writing by the person delivering them.

113. Instruments and applications delivered by post or under cover during the hours in which the office is open for registration shall be treated as delivered at the same time and immediately before the closing of the office for that day. Instruments and applications delivered between the hours of closing and of the next opening of the office for registration shall be treated as delivered at the same time and immediately after such opening.

114. The names and addresses of transferees and other persons required to be entered on the register shall be entered as given in the registered instruments or as stated by them or their solicitors at the time of registration. If errors in these particulars are afterwards alleged, evidence may be furnished and referred to on the register, but the original entries shall not be altered.

115. If any alteration is required to be made in an instrument after it has been delivered for registration, it may, before any entry in respect thereof has been made in the register and if the registrar shall think fit, be withdrawn from registration and handed out for the purpose of alteration and re-execution. The re-execution must be by all persons whose interests appear to be affected by the instrument, whether it was originally so executed by them or not. On re-delivery at the registry, the dealing shall be registered as of the date and priority of such re-delivery.

116. Where an instrument or application affects two or more titles or two or more charges it may, on the written application of the person delivering it for registration, be

registered as to some or one only of the titles or charges ^{1903, rr.} affected thereby. An instrument so registered may be afterwards registered as to any of the other titles or charges affected thereby, but shall not affect any title or charge as to which it has not been registered. ^{96-125.}

117. The registered proprietor of land or of a charge or his solicitor, or with his consent in writing any other person or his solicitor, may lodge at the registry a notice (to be called a priority notice) in form 19 in the first schedule hereto reserving priority for a specified instrument or for a specified application intended to be subsequently made. The notice shall be accompanied by the land certificate or certificate of charge and shall be entered on the register and the certificate shall be endorsed accordingly. If within 14 days from the lodging of the notice or such further time as the registrar shall think fit, the specified instrument or application is delivered for registration, it shall be registered with priority to any other instrument or application affecting the same land or charge which may have been delivered in the meantime. On the expiration of the period fixed, as aforesaid, for the operation of the notice, it may be cancelled.

118. On the delivery for registration of an instrument or application, notice of the fact shall be sent to the person by whom it purports to be executed, and, where the instrument purports to be a conveyance or transfer in exercise of a power of sale contained either in a mortgage prior to the registration of the land or in a registered charge, notice of the fact shall also be sent to the proprietor of the land and to the proprietors of all subsequent charges.

The notice shall state that the person to whom it is addressed will have three clear days from the posting of the notice, within which to lodge objections. In the absence of any objection the registration may be completed at the expiration of the limited period.

119. Except where otherwise provided by these Rules, all deeds, applications, and other documents on which any entry in the register is founded shall be retained, and shall not be taken away from the registry except under a written order of the registrar or an order of the Court.

120. Where registered leasehold land is held under a lease which requires assignments and other dispositions to be produced to the lessor or his agent, or to be produced to and endorsed by him, such a stipulation shall, as regards any transfer or charge, be sufficiently complied with by production thereof

1903, rr.
96-125.

to him and by endorsement, if required, of the instrument of transfer or charge, or after the registration thereof, by production and by endorsement, if required, of the land certificate or certificate of charge as the case may be. Such endorsement shall not be made on the copy of the filed plan, or on the copy of the entries in the register.

121. Upon the registration of a charge in favour of a building society, friendly society (including a branch society), or industrial and provident society, the instrument of charge may (if it is so desired) be delivered to them after registration upon their delivering at the registry a copy thereof, verified by the signature of the secretary as being a correct copy; which copy shall be admissible for all purposes as sufficient evidence of the contents and execution thereof, without the production of the original charge. Such copy need not be stamped, and must be filed in the registry.

122. Where an instrument of charge in favour of a building society, friendly society (including a branch society), or industrial and provident society, is delivered to the society under the preceding rule, it shall be endorsed with a certificate of registration, and the instrument so endorsed shall be treated for all purposes as the certificate of charge. It shall be endorsed with notes of transfers, part discharges, and other dealings, and when the charge is wholly discharged shall be delivered up, cancelled, and retained in the registry.

iv. Stamp Duty.

123. When an application or instrument capable of registration is made or executed for the sole purpose of carrying out on the register a transaction already effected by a deed or other instrument not on the register, the inland revenue stamp on the transaction shall be affixed to or impressed on the last mentioned deed or instrument, and the registered instrument shall bear no stamp duty. Provided that the stamped instrument shall before the completion of the registration be produced to an officer of the registry, to show that all duty payable in respect of the transaction has been paid.

124. When, upon the delivery of any instrument for registration, a question arises whether such instrument, or any other instrument produced under rule 123, is sufficiently stamped, and the applicant for registration, or his solicitor, gives a written undertaking that he will within a time fixed by the registrar procure and furnish the necessary evidence that the

instrument so delivered or produced either then was or has subsequently been sufficiently stamped, a note shall be made in the register that on that day registration was applied for, but that such question having arisen it was not completed: and the instrument shall be returned to the person who delivered or produced it. If such instrument is subsequently, within the time fixed, delivered or produced at the registry, with the proper evidence that it is when so delivered or produced sufficiently stamped, the registration shall be completed as of the date on which the note was made. If, at the expiration of the time fixed, the written undertaking has not been complied with, the note shall be withdrawn from the register.

125. Except where otherwise provided, the registrar shall not receive any document required to be stamped which in his opinion is not sufficiently stamped.

Transmission on death, bankruptcy, etc.

Transmission of land and charges.

41. On the death of the sole registered proprietor, or of the survivor of several joint registered proprietors of any freehold land, such person shall be registered as proprietor in the place of the deceased proprietor or proprietors as may, on the application of any person interested in the land, be appointed by the registrar, regard being had to the rights of the several persons interested in such land, and in particular to the selection of such person as may for the time being appear to the registrar to be entitled according to law to be so appointed, subject to an appeal to the court in the prescribed manner by any person aggrieved by any order of the registrar under this section.

42. On the death of the sole registered proprietor, or of the survivor of several joint registered proprietors of any leasehold land or of any charge, the executor or administrator of such sole deceased proprietor, or of the survivor of such joint proprietors, shall be entitled to be registered as proprietor in his place.

43. Upon the bankruptcy of any registered proprietor of any land or charge, or on the liquidation of his affairs by arrangement, his trustee shall be entitled to be registered as proprietor in his place.

[This section shall not apply until it is certified in the prescribed manner by the court having jurisdiction in

1875, ss.
41-48. bankruptcy that the land or charge is part of the property of the bankrupt divisible amongst his creditors. The official receiver shall be entitled to be registered pending the appointment of a trustee.]

Paragraph in brackets added by 1897, sched. 1.

44. The husband of any female registered proprietor of freehold land may apply to be registered as co-proprietor with his wife, but he shall be described on the register as co-proprietor in right of his wife, and on his death in her lifetime the original registry of the wife, with a change if necessary in the name, shall revive, and confer the same rights as if her husband had never been registered as co-proprietor with her, subject nevertheless to any registered disposition which may have been made by the husband and wife in the meantime. If the husband survives the wife he shall not be entitled to be registered as sole proprietor of the land, but there shall be registered as co-proprietor with him if he is entitled as tenant by the curtesy, and as sole proprietor in place of himself and his deceased wife if he is not entitled as tenant by the curtesy, such person as may, on the application of any person interested in right of the wife, be appointed by the registrar with power for the registrar on a like application to appoint from time to time another person or other persons in the event of any person registered as co-proprietor with the husband dying in his lifetime.

Any person aggrieved by any order of the registrar under this section may appeal to the court in the prescribed manner.

[This section shall not apply to the case of any woman married on or after 1st January, 1883, or to any property to which a married woman is entitled for her separate use.]

Paragraph in brackets added by 1897, sched. 1.

45. The husband of any female registered proprietor of leasehold land or of a charge may apply to be registered as proprietor in her place.

[This section shall not apply to the case of any woman married on or after 1st January, 1883, or to any property to which a married woman is entitled for her separate use.]

Paragraph in brackets added by 1897, sched. 1.

46. Any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge in respect of which he is registered upon the trusts and for the purposes to which the same is applicable by law, and subject to any

unregistered estates, rights, interests, or equities subject to 1875, ss. which the deceased or bankrupt proprietor held the same; 41-48. but, save as aforesaid, he shall in all respects, and in particular as respects any registered dealings with such land or charge, be in the same position as if he had taken such land or charge under a transfer for a valuable consideration.

47. The fact of any person having become entitled to any land or charge in consequence of the death or bankruptcy of any registered proprietor, or of the marriage of any female proprietor, shall be proved in the prescribed manner.

48. *Section five of the Vendor and Purchaser Act, 1874, shall be repealed on and after the commencement of this Act, except as to anything duly done thereunder before the commencement of this Act; and, instead thereof, be it enacted, that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee; but the enactment by this section substituted for the aforesaid section of "The Vendor and Purchaser Act, 1874," shall not apply to lands registered under this Act.*

Repealed by s. 30 of the Conveyancing Act, 1881.

Part I.

1897, ss.
1-5.

Establishment of a Real Representative.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

1897, ss.
1-5.

2.—(1.) Subject to the powers, rights, duties, and liabilities herein-after mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4.) Where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next-of-kin, shall be equally entitled to the grant with the next-of-kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent

or conveyance, subject to a charge for all moneys (if ^{1897. ss.} any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorize the registrar to register the person named in the assent as proprietor of the land.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the court, and such valuation and appropriation shall be conclusive save as otherwise directed by the court.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary

1897, ss.
1-5. estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorize the registrar to register the person to whom the property is appropriated as proprietor of the land.

5. Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

1903, rr.
183-200.

Transmissions of land and charges.

i. On death.

183. On production of the probate or letters of administration of a sole (or sole surviving) registered proprietor of land or of a charge, dying after 1897, the personal representative named in such probate or letters shall be registered as proprietor in the place of the deceased proprietor, with the addition of the words, "*Executor or Executrix (or Administrator or Administratrix) of [name] deceased,*" and if an executrix or administratrix is a married woman, that fact shall be stated.

184. When, after one executor has been registered as proprietor under the preceding rule, another executor applies to be registered as proprietor jointly with him, the registrar shall, after notice to the other executor or executors, make the necessary alteration in the register upon production by the executor applying, of the probate obtained by him; or if he has not proved the will, of a statement in writing, signed by him, that he has accepted the executorship and desires to be registered accordingly.

185. On the production of—

(a) the probate or letters of administration with the will annexed and of an instrument of assent or appropriation in either of the forms 51 or 52 in the first schedule hereto; or

(b) a transfer by the personal representative and of the probate or letters of administration,

the devisee or legatee named in the assent or appropriation, or the transferee named in the transfer, shall be registered as proprietor of the land or charge in place of the deceased proprietor.

186. Where a settlement is created by the will of, or otherwise arises in consequence of the death of, a sole registered proprietor, the personal representative shall, at the proper time,

with the consent of the tenant for life (if of full age) deliver at the registry, together with the probate or letters of administration, a written application for the registration of a proprietor, with the proper restrictions, according to the principles stated in section 6 of the Act of 1897 and rule 80; and thereupon the registration shall be made accordingly; and, if the parties desire it, the probate, or settlement, or a copy or abstract thereof, may be deposited in the registry for safe custody and future reference.

187. When the trustees of a settlement apply, on the death of a tenant for life, for the registration of a successor under the settlement, they and their solicitor shall make a statutory declaration to the effect that the deceased proprietor was tenant for life, and that they are the trustees of the settlement, and that the person for whose registration they are applying is the successor under the settlement, and that the restrictions applied for are those proper to be entered, or that no restrictions are required.

188. In any case under Rule 187 in which the registrar requires that the declaration shall be accompanied by a certificate of counsel to the like effect, such certificate to his satisfaction shall be produced.

189. When such declaration (and certificate if required) are produced, the registrar shall not require production of the settlement or any further evidence; but when they are not produced he shall inquire into the terms of the settlement and shall satisfy himself that the proper entries are made on the register.

190. On the death of a tenant for life registered as proprietor of land if the trustees of the settlement neglect to apply for the registration of the new proprietor in his place, or if there are no such trustees, any person interested under the settlement may apply for the registration of a new proprietor. The registrar shall thereupon inquire into the terms of the settlement, and shall settle draft entries for the register on the principles stated in section 6 of the Act of 1897 and rule 80 in regard to settled land, and shall give notice thereof to the trustees of the settlement (if any) and to the succeeding tenant for life, and to such other persons (if any) as he may think fit, and if no valid objection is made thereto, shall enter the new proprietor accordingly.

191. If one of several joint proprietors of land or of a charge die, his name shall be withdrawn from the register on proof of death, or on production of probate or letters of

1903, rr.
183-200. administration, together with such other evidence (if any) as the registrar may require.

192. On the death of a proprietor registered under rule 196 as Official Receiver or trustee in bankruptcy, his personal representatives shall not be registered, but proceedings shall be taken in accordance with rule 198.

ii. On bankruptcy or liquidation.

193. On production to the registrar of an office copy of an order of a Court having jurisdiction in bankruptcy adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered under section 125 of the Bankruptcy Act, 1883, together with a certificate signed by the Official Receiver that any registered land or charge is part of the property of the bankrupt or deceased proprietor divisible amongst his creditors, the Official Receiver may be registered as proprietor in the place of the bankrupt or deceased proprietor.

194. When the Official Receiver has been registered as proprietor and some other person is subsequently appointed trustee, such person may be registered as proprietor in the place of the Official Receiver on production of an office copy of the certificate by the Board of Trade of his appointment as trustee.

195. If the Official Receiver has not been registered as proprietor, the trustee may be registered as proprietor, on production of office copies of the order adjudging the proprietor bankrupt and of the certificate of the appointment of the trustee, with a certificate signed by the trustee that the land or charge is part of the property of the bankrupt divisible amongst his creditors.

196. Where the Official Receiver or trustee in bankruptcy is registered as proprietor, the words "Official Receiver," or "Trustee of the property of [*name*] a bankrupt" shall be added in the register.

197. If any registered land or charge is vested in the trustee under the provisions of a scheme of arrangement approved by a Court having jurisdiction in bankruptcy, the Official Receiver or other trustee may be registered as proprietor in like manner as a trustee in bankruptcy, upon production of an office copy of the scheme of arrangement, a certificate signed by the Official Receiver or such other trustee, that the registered land or charge was part of the property

vested in him under the provisions of the scheme ; and, in the case of a trustee, other than the Official Receiver, an office copy of the certificate by the Board of Trade of his appointment as trustee. 1993, rr.
183-200.

198. When a trustee in bankruptcy, or trustee under the provisions of such scheme of arrangement, who has been registered as proprietor, vacates his office as trustee by reason of a receiving order having been made against him, or by release, resignation, death, removal from office, or any other cause, the Official Receiver may be registered as proprietor ; or if some other person be appointed trustee, such person may be registered as proprietor on production of an office copy of the certificate of his appointment as trustee.

199. Where the Official Receiver or a trustee has been registered as proprietor, and, by reason of any act or omission or order, his estate and interest in the property has become divested, he may give notice to the registrar in form 53 in the first schedule hereto, which notice shall be entered on the register, together with a general restriction against dealings until further order. On such entry being made the Official Receiver or trustee shall be exonerated from all such liability (if any) as may affect him in respect of the property by reason of his name being entered on the register as proprietor thereof. When such notice has been entered on the register an entry may be made under rule 151 without notice to the registered proprietor, or inquiry as to his execution of a transfer.

200. In the liquidation of a company any resolution or order appointing a liquidator may be filed and referred to on the register, and, when so registered, shall be deemed to be in force until it is cancelled or superseded on the register.

Unregistered dealings.

Part III.

Unregistered dealings with registered land.

49. The registered proprietor alone shall be entitled to transfer or charge registered land by a registered disposition ; but, subject to the maintenance of the estate and right of such proprietor, any person, whether the registered proprietor or not of any registered land, having a sufficient estate or interest in such land, may create estates, rights, interests, and equities

1875, ss.
49-51.

in the same manner as he might do if the land were not registered; and any person entitled to or interested in any unregistered estates, rights, interests, or equities in registered land may protect the same from being impaired by any act of the registered proprietor by entering on the register such notices, cautions, inhibitions, or other restrictions as are in this Act in that behalf mentioned.

The registered proprietor alone shall be entitled to transfer a registered charge by a registered disposition; but, subject to the maintenance of the right of such proprietor, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject-matter admits, in and with which unregistered estates and interests may be created in registered land.

[This section includes power to sever the mines and minerals from the surface.]

Paragraph in brackets added by 1897, sched. 1.

Notice of Leases.

50. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land *made subsequently to the last transfer of the land on the register*, where the term granted is for a life or lives, or is determinable on a life or lives, or exceeds twenty-one years, or where the occupation is not in accordance with such lease or agreement, may apply to the registrar to register notice of such lease or agreement in the prescribed manner, and when so registered every registered proprietor of the land, and every person deriving title through him, excepting proprietors of incumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of such lease or agreement as being an incumbrance on the land in respect of which the notice is entered.

Words in italics repealed by 1897, sched. 1.

51. In order to register notice of a lease or agreement for a lease, if the registered proprietor of the land does not concur in such registry, the applicant shall obtain an order of the court, authorizing the registration of notice of such lease or agreement and shall deliver such order to the registrar, accompanied with the original lease or agreement or a copy thereof, and thereupon the registrar shall make a note in the register identifying the lease or agreement or copy so deposited, and the lease or agreement or copy so deposited shall be deemed

to be the instrument of which notice is given; but if the registered proprietor concurs in such registry, notice may be entered in such manner as may be agreed upon.

Part IV.

1903, rr.
201-206.

Minor Entries in the Register.

Notices of Leases or Agreements.

201. An application to register notice of a lease or agreement for a lease under sections 50 and 51 of the Act of 1875 may be made either by the lessee or by any person entitled to or interested in the lease or agreement or by the registered proprietor of the land against which the notice is to be entered. The application shall be accompanied by the lease or counterpart, or by the agreement or duplicate, as the case may be, also by a copy or full abstract thereof, and a copy or tracing of the plan (if any) thereon. Except where the application is made by the registered proprietor, it shall be accompanied also by either the consent of such registered proprietor in writing signed by himself or his solicitor or by an order of the Court authorizing the registration of the notice. Consent to the registration of a notice of a lease or agreement may be given either before or after its execution.

202. Where the lease or sub-lease, of which notice is so given, is by way of security for money advanced or to be advanced, the land certificate of the lessor or sub-lessor shall be produced and endorsed with a note of the entry.

203. Where after the creation of an incumbrance a lease is executed which would, apart from the Land Transfer Acts, 1875 and 1897, be binding on the incumbrancer, and notice of such lease is registered under section 50 of the Act of 1875, that notice shall be effectual against the incumbrancer notwithstanding that his incumbrance was registered before the registration of the notice.

204. If the lease or agreement comprises only part of the land in the title and does not contain sufficient particulars (by plan or otherwise) to enable such part to be clearly shown on the filed plan of the land, the applicant (with the concurrence of all other necessary parties, if any) shall furnish the necessary information.

205. The notice in the register shall refer to the filed copy or abstract of the lease or agreement, and shall give the term, and may include such other short particulars as can be

1903, rr.
201-206.

conveniently entered. Where the lease or agreement confers a right of preemption this shall be noted in the register. The lease or agreement shall be marked with a note of the entry and shall be returned to the applicant.

206. If the lease or counterpart or the agreement or duplicate is not produced, a statutory declaration by the applicant or his solicitor, stating the reason of the non-production and verifying the copy or abstract, shall be furnished.

1875, s.
52.

Notice of Estates in Dower or by the Curtesy.

52. Any person entitled to an estate in dower or by the curtesy in any registered land may apply in the prescribed manner to the registrar to register notice of such estate; and the registrar, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form; and when so registered, such estate shall be an incumbrance appearing on the register, and shall be dealt with accordingly.

1903, r.
207.

Notices of Estates in Dower or by the Curtesy.

207. Application under section 52 of the Act of 1875 to register notice of an estate in dower or by the curtesy in any registered land shall be in the form 54 in the first schedule hereto, and shall show concisely the existing rights of the several persons interested in the land affected by the application. The evidence in support of the application shall be delivered therewith, and the matter shall be proceeded with as the registrar shall direct. Notice of an estate in dower or by the curtesy shall be entered in the charges register as an incumbrance.

Cautions, Inhibitions, Restrictions.

1875, ss.
53-59.

Cautions against registered dealings.

53. Any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever, in any land or charge registered in the name of any other person, may lodge a caution with the registrar to the effect that no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner.

The caution shall be supported by an affidavit or declaration

SS.52-57.] CAUTIONS, INHIBITIONS, RESTRICTIONS. 345

made by the cautioner or his agent in the prescribed form, 1875, ss. 53-59. and containing the prescribed particulars.

Provided, that a person interested under a lease or agreement for a lease of which notice has been entered on the register, or entitled to an estate in dower, or estate by the curtesy, of which notice has been entered on the register, shall not be entitled to a caution in respect of such lease or estate in dower or by the curtesy.

54. After any such caution has been lodged in respect of any land or charge, the registrar shall not, without the consent of the cautioner, register any dealing with such land or charge until he has served notice on the cautioner, warning him that his caution will cease to have any effect after the expiration of the prescribed number of days next ensuing the date at which such notice is served; and after the expiration of such time as aforesaid the caution shall cease unless an order to the contrary is made by the registrar, and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged.

55. If before the expiration of the said period the cautioner, or some other person on his behalf, appears before the registrar, and give sufficient security to indemnify every party against any damage that may be sustained by reason of any dealing with the land or charge being delayed, the registrar may thereupon, if he thinks fit so to do, delay registering any dealing with the land or charge for such further period as he thinks just.

56. If any person lodges a caution with the registrar without reasonable cause, he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just, and such compensation shall be recoverable as a debt by the person who has sustained damage from the person who lodged the caution.

Any person aggrieved by any act done by the registrar in relation to cautions under this Act, may appeal to the court in the prescribed manner.

Inhibition against registered dealings without order of Court.

57. The court, or, subject to an appeal to the court, the registrar, upon the application of any person interested, made in the prescribed manner, in relation to any registered land or charge, may, after directing such inquiries (if any) to be made and notices to be given and hearing such persons as the

1875, ss.
53-59.

court or registrar thinks expedient, issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, any dealing with any registered land or registered charge.

The court or registrar may make or refuse to make any such order or entry, and annex thereto any terms or conditions the court or registrar may think fit, and discharge such order or cancel such entry when granted, with or without costs, and generally act in the premises in such manner as the justice of the case requires.

Any person aggrieved by any act done by the registrar in pursuance of this section may appeal to the court in the prescribed manner.

Power of registered proprietor to impose restrictions.

58. Where the registered proprietor of any land is desirous *for his own sake, or at the request of some person beneficially interested in such land*, to place restrictions on transferring or charging such land, such proprietor may apply to the registrar to make an entry in the register that no transfer shall be made of or charge created on such land, unless the following things, or such of them as the proprietor may determine, are done; (that is to say,)

Unless notice of any application for a transfer or for the creation of a charge is transmitted by post to such address as he may specify to the registrar :

Unless the consent of some person or persons, to be named by such proprietor, is given to the transfer or the creation of a charge :

Unless some such other matter or thing is done as may be required by the applicant and approved by the registrar.

[The section shall apply to charges as well as to land.]

Words in italics repealed, and paragraph in brackets added, by 1897, sched. 1.

59. The registrar shall thereupon, if satisfied of the right of the applicant to give such directions, make a note of such directions on the register, and no transfer shall be made or charge created except in conformity with such directions; but it shall not be the duty of the registrar to enter any of the above directions, except upon such terms as to payment of fees and otherwise as may be prescribed, or to enter any restriction that the registrar may deem unreasonable, or calculated

ss. 57-59.] CAUTIONS, INHIBITIONS, RESTRICTIONS. 347

to cause inconvenience; and any such directions may at any ^{1875, ss.} time be withdrawn or modified at the instance of all the persons ⁵³⁻⁵⁹ for the time being appearing by the registry to be interested in such directions, and shall also be subject to be set aside by the order of the court.

Cautions (except cautions against entry of land on the register); inhibitions and restrictions.

1903, rr.
226-242.

226. A caution against dealing with registered land or a registered charge, lodged under section 53 of the Act of 1875 shall be in form 58 in the first schedule hereto; and a caution against the registration of a possessory or good leasehold or qualified title as good leasehold or qualified or absolute shall be in form 59 in the first schedule hereto. The caution shall be signed by the cautioner or his solicitor, and shall contain an address for service in the United Kingdom, and the declaration in support of the caution shall be in form 15 in the first schedule hereto, or to the like effect, and shall contain a reference to the land or charge to which it applies, and to the registered number of the title, and shall also state the nature of the interest of the cautioner in such land or charge.

227. It shall not be necessary that the land to which a caution relates should be described therein in any particular manner, if sufficient particulars are given by plan or otherwise to identify on the proper ordnance map the land to which the caution is intended to apply.

228. Any consent given under section 54 of the Act of 1875 by the cautioner shall be signed by him or his solicitor.

229. On the application at any time in writing of the registered proprietor of the land or of a charge to which a caution relates, or when a dealing affecting such land or charge is brought in for registration without the consent of the cautioner, the notice under section 54 of the Act of 1875 shall be served on the cautioner. The period to be limited by such notice shall be fourteen days or such other period (not being less than seven days) as the registrar may under special circumstances direct. The notice shall be in form 60 in the first schedule hereto.

230. At any time before the expiration of the period limited by the notice, or such extension thereof as may be granted by the registrar, the cautioner may show cause why the caution should continue to have effect, or why the dealing should not be registered—as, for instance, that it has been obtained by

1903, rr.
226-242.

fraud or mistake, or that it is inconsistent with a prior dealing or with some adverse right or equity.

231. Cause may be shown either by the cautioner appearing before the registrar or by his delivering a statement in writing, signed by him or his solicitor, setting forth the grounds on which cause is shown. The registrar may thereupon either order that the caution shall thenceforth cease to have effect and that the entry thereof on the register be cancelled, or he may appoint a time for the registered proprietor or the applicant for registration, as the case may be, and the cautioner, and such other persons (if any) as he may deem expedient, to appear before him.

After hearing all such persons, and serving such notices (if any) as he shall think necessary, the registrar shall make such order in the matter as he shall think just, as, for instance, that the caution shall continue to have effect, or that it shall cease to have effect and that the entry thereof on the register be cancelled, or that the registration be refused either with or without an inhibition against registration at any future time, or that it be completed forthwith, or after an interval, or that it be completed conditionally or with some modification, or subject to the prior registration of a dealing in favour of the cautioner, or subject to some notice, condition, restriction, or inhibition under the Acts. The registrar may refer the matter, at any stage, or any question arising thereon, for the decision of the Court.

232. When the notice required by a caution has been given in respect of the whole of the land comprised in it, and the period named in the notice has expired, the caution shall, unless the registrar shall otherwise direct, be deemed to be exhausted, and shall be withdrawn from the register.

233. A caution may at any time be withdrawn upon an application for that purpose in form 61 in the first schedule hereto, signed by the cautioner or his solicitor, and thereupon the entry thereof on the register shall be cancelled: but any liability under the Act of 1875 of a cautioner to indemnify or make compensation shall not be affected by such withdrawal.

234. An application for an inhibition under section 57 of the Act of 1875 shall either be accompanied by the consent in writing of the registered proprietor of the land, or shall be supported by the statutory declaration of the applicant and such other evidence (if any) as the Court, or the registrar, as the case may be, may deem necessary.

235. In the absence of any such consent by the registered

proprietor, notice of the application shall be given to him, and, if necessary, an appointment shall be made for hearing the same. 1903, rr.
226-242.

236. Where an inhibition was originally entered in pursuance of an order of the Court, applications to discharge or cancel the same shall be made to the Court, and in other cases such applications shall be made to the registrar. They may be made by any person aggrieved by the inhibition.

237. Where land is transferred to the incumbent of a benefice and his successors, an inhibition shall be entered in the register and on the land certificate in form 62 in the first schedule hereto, or to the like effect.

238. In the case of a sale by an incumbent under the Glebe Lands Act, 1888, or any Act amending or extending the same, the receipt of the Board of Agriculture for the purchase money shall be deemed to be a certificate in accordance with section 15 of the Act of 1897, and shall be a sufficient authority to the registrar to register the transfer.

239. In all other cases of dispositions by incumbents the certificate to be given in accordance with section 15 of the Act of 1897 shall be a certificate in form 63 in the first schedule hereto, or to the like effect.

240. An application for a restriction on transferring or charging land or a charge under section 58 of the Act of 1875 as amended by the Act of 1897 shall be in form 64 in the first schedule hereto, and shall state the particulars of the restriction required to be entered on the register, and shall be signed by the applicant or his solicitor, and shall be proceeded with as the registrar shall direct; and an application under section 59 of the Act of 1875 to withdraw or modify any restriction shall be in form 65 in the same schedule, and shall be signed by all persons for the time being appearing by the register to be interested in the restriction, or their solicitors.

241. Application may be made to the registrar for an order under an inhibition or restriction in anticipation of an intended dealing, and the registrar may on any such application make an order that the dealing be registered either unconditionally or subject to such limitations or conditions as he may think fit. The order need not be entered on the register, but shall be filed, and so long as it is in force shall be shown to any person searching the register.

242. In order to give due effect to any arrangement with respect to land made under any of the Acts relating to or administered by the Ecclesiastical Commissioners, whether by

1903, rr.
226-242.

scheme and Order in Council, grant, conveyance, transfer, or other instrument, the Ecclesiastical Commissioners shall be deemed to be persons interested within the meaning of sections 53 and 57 of the Act of 1875.

1875, ss.
60-64.

Part IV.

Provisions supplemental to foregoing parts of Act.

Caution against entry of land on register.

60. Any person having or claiming such an interest in any land which is not already registered as entitles him to object to any disposition thereof being made without his consent, may lodge a caution with the registrar to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of such land.

61. The caution shall be supported by an affidavit or declaration in the prescribed form, stating the nature of the interest of the cautioner, the land to be affected by such caution, and such other matters as may be prescribed.

62. After a caution has been lodged in respect of any land, which has not already been registered, registration shall not be made of such land until notice has been served on the cautioner to appear and oppose, if he thinks fit, such registration, and the prescribed time has elapsed since the date of the service of such notice, or the cautioner has entered an appearance, which may first happen.

63. If any person lodges a caution with the registrar without reasonable cause, he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just, and such compensation shall be deemed to be a debt due to the person who has sustained damage from the person who has lodged the caution.

64. A caution lodged in pursuance of this Act shall not prejudice the claim or title of any person, and shall have no effect whatever except as in this Act mentioned.

1903, rr.
88-94.

Cautions, under section 60 of the Act of 1875, against entry of land on the register.

88. A caution against entry of land on the register, lodged under section 60 of the Act of 1875, shall be in form 14 in the first schedule hereto, and shall be signed by the cautioner or his solicitor, and shall contain an address for service in the

United Kingdom, and shall refer to, and be accompanied by, ^{1903, rr.} sufficient particulars, by plan or otherwise, to identify on the ⁸⁸⁻⁹⁴⁻ ordnance map the land to which the caution relates.

89. In the case of a manor or an advowson or other incorporeal hereditament, the names of the county and parish or place and such other particulars (if any) as the registrar may deem necessary shall be furnished.

90. The statutory declaration in support of the caution shall be in form 15 in the first schedule hereto, and shall be delivered with the caution.

91. The period to be limited by the notice to be served on the cautioner under section 62 of the Act of 1875 shall be fourteen days, or such other period (not being less than seven days) as the registrar may under special circumstances direct. The notice shall be in form 16 in the first schedule hereto.

92. The caution may at any time be withdrawn in respect of the whole or any part of the land to which it relates upon an application for that purpose in form 17 in the first schedule hereto, signed by the cautioner or his solicitor, or the person entitled to the benefit of the caution or his solicitor. Where the withdrawal is in respect of a part only of the land the application shall refer to, and be accompanied by, sufficient particulars, by plan or otherwise, to identify on the ordnance map the part to which the withdrawal relates.

93. At any time after the notice required by section 62 of the Act of 1875 has been served, the cautioner may, by writing signed by himself or his solicitor, consent to the registration, and the consent may be either absolute or conditional on some special entry being made on the register.

94. The registrar may, if he think fit, allow any person interested in the land to inspect the caution and the statutory declaration lodged in support of it.

Crown land, Copyhold land.

Crown lands.

1875, ss.
65-67.

65. With respect to land or any estate, right, or interest in land vested in Her Majesty, *her heirs or successors*, either in right of the Crown or of the Duchy of Lancaster, or otherwise, or vested in any public officer or body in trust for the public service, the public officer or body having the management thereof (if any), or, if none, then such person as Her Majesty

1875, ss.
65-67.

her heirs or successors, may by writing under her or *their* sign manual appoint, may represent the owner of such land, estate, right or interest for all the purposes of this Act, and shall be entitled to such notices, and may make and enter any such application or cautions, and do all such other acts, as any owner of land, or of any estate, right, or interest therein (as the case may be) is entitled to receive, make, enter, or do under this Act; and with respect to land or any estate, right, or interest in land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall for the time being, or as the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, may in writing appoint, may act as and represent the owner of such land, estate, right, or interest for all the purposes of this Act, and shall be entitled to receive such notices, and may make and enter any such application or cautions, and do all such other acts as any owner of land or of any estate, right, or interest in land (as the case may be) is entitled to make, enter, or do under this Act.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

66. If it appears to the registrar that any land, application for registration whereof is made to him, comprises land below high-water mark at ordinary spring tides, he shall not register the land unless and until he is satisfied that at least one month's notice in writing of the application has been given to the Board of Trade; and in case of land in the county palatine of Lancaster, also to the proper officer of the Duchy of Lancaster; and in case of land in the counties of Cornwall or Devon, also to the proper officer of the Duke of Cornwall; and in all other cases also to the Commissioners of *Her Majesty's Woods, Forests, and Land Revenues*.

[This section shall not apply to registration with a possessory title.]

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

Paragraph in brackets added by 1897, sched. 1.

As to proceedings on and before registration.

67. If it appears to the registrar that any land, application for registration whereof is made to him, comprises land of freehold tenure and also land of a tenure other than freehold intermixed and undistinguishable, he may, notwithstanding anything in this Act, register the land, but he shall enter notice on the register in such manner as he thinks fit of the

facts relating to the tenure of the land, and the tenure of the portion of the land other than freehold shall remain unaffected by the registration. ^{1875, ss. 65-67.}

Freehold intermixed with copyhold land.

^{1903, r. 87.}

87. Where it is uncertain whether land proposed to be registered is of freehold or of copyhold tenure, a note shall be entered in the register to the effect that it is doubtful whether the land is of freehold or of copyhold tenure, and that the registration is made without prejudice to any right that may arise if it is subsequently ascertained that the land is of copyhold tenure.

Trustees, Limited owners, Part owners.

68. Any person holding land on trust for sale, and any trustee, mortgagee, or other person having a power of selling land, may authorize the purchaser to make an application to be registered as first proprietor with any title which a proprietor is authorized to be registered with under this Act, and may consent to the performance of the contract being conditional on his being so registered, or may himself apply to be registered as such proprietor with the consent of the persons (if any) whose consent is required to the exercise by the applicant of his trust or power of sale; and the amount of all costs, charges, and expenses properly incurred by such person in or about such application shall in all cases be ascertained and declared by the registrar, and shall be deemed to be costs, charges, and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and such person may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in equity in respect thereof. ^{1875, s. 68.}

Part II.

^{1897, ss. 6, 15.}

Amendments of the Land Transfer Act, 1875.

6.—(1.) Settled land may (at the option of the tenant for life) be registered either in the name of the tenant for life, or, where there are trustees with powers of sale, in the names of those trustees, or, where there is an overriding power of appointment of the fee simple, in the names of the persons in whom that power is vested.

1897, ss.
6, 15.

(2.) There shall also be entered on the register such restrictions or inhibitions as may be prescribed, or may be expedient, for the protection of the rights of the persons beneficially interested in the land.

(3.) Where land already registered is assured to the uses of a settlement, the instrument of transfer may be in a specially prescribed form, which shall operate as a conveyance to the uses of the settlement, and it shall be the duty of the trustees of the settlement (if any) to concur in the instrument, and to apply for the entry on the register of the proper restrictions or inhibitions under this section. If there are no such trustees, the registrar shall inquire into the terms of the settlement, and shall enter on the register such restrictions or inhibitions as may be prescribed, or as appear to him to be in accordance with this section.

(4.) On the death of a tenant for life, registered as proprietor of settled land, it shall be the duty of the trustees of the settlement (if any) to apply for the registration of his successor or successors, with such restrictions or inhibitions (if any) as may be in accordance with this section. If the trustees neglect to apply or if there are no such trustees, the registrar shall proceed under the forty-first section of the principal Act in such manner as may be prescribed.

(5.) Where a settlement is created by the will of, or otherwise arises in consequence of the death of, a sole registered proprietor of land or of an undivided share in land, it shall be the duty of his personal representatives to apply for the registration of the person entitled to be registered as proprietor, and for the entry on the register of proper restrictions or inhibitions in accordance with this section.

(6.) The settlement, or an abstract or copy thereof, may be filed in the registry for reference in the prescribed manner, but such filing shall not affect a purchaser or mortgagee for value from the registered proprietor with notice of its provisions, or entitle him to call for production of the settlement, or for any information or evidence as to its contents.

(7.) The registered proprietor of settled land and all other necessary parties (if any) shall, on the request, and at the expense, of any person entitled to an estate, interest, or charge conveyed or created for securing money actually raised at the date of such request, charge the land in the prescribed manner with the payment of the money so raised.

(8.) Subject to the maintenance of the right of the registered proprietor to deal by registered disposition, or by way

of mortgage by deposit, with any land whereof he is registered as proprietor, the estates, rights, and interests of the persons for the time being entitled under any settlement comprising the land shall be unaffected by the registration of that proprietor. ^{1897, ss. 6, 15.}

(9.) A person in a fiduciary position may apply for, or concur in, or assent to, any registration authorized by this section, and, if he is a registered proprietor, may execute an instrument of transfer or charge in the prescribed form in favour of any person whose registration is so authorized.

(10.) In this section the expressions "tenant for life," "settled land," "settlement," and "trustees of the settlement," have the same meaning as in the Settled Land Acts, 1882 to 1890.

15.—(1.) Where the incumbent of a benefice, and his successors are the registered proprietors of land—

(i.) No disposition thereof shall be registered unless a certificate in the prescribed form shall be obtained—

(a) in case of sales under the Parsonages Act, 1838, or the Church Building Act, 1839, or any Acts amending or extending the same respectively, from Queen Anne's Bounty; or

(b) in case of sales under the Glebe Lands Act, 1888, or any Acts amending or extending the same, from the Board of Agriculture; or

(c) in all other cases, from the Ecclesiastical Commissioners.

(ii.) No lien shall be created by deposit of the land certificate,

and an inhibition shall be placed on the register and on the land certificate accordingly.

The production of a certificate from any of the above-mentioned bodies shall be a sufficient authority to the registrar to register the disposition in question, and it shall be the duty of the proper body to grant such certificate in all cases in which the facts admit thereof.

(2.) On the registration of the incumbent of a benefice and his successors as the proprietors of registered land, if it shall be certified by Queen Anne's Bounty, or shall otherwise appear, that such land was originally purchased by Queen Anne's Bounty or was otherwise appropriated or annexed by or with the consent or the concurrence of Queen Anne's Bounty to the benefice for the augmentation thereof, the registrar shall enter a note to that effect on the register.

1897, ss.
6, 15

(3.) Where the incumbent of a benefice is entitled to indemnity under the provisions of this Act, the money shall be paid to Queen Anne's Bounty and appropriated by them to the benefice.

(4.) The term "benefice" in this section shall comprehend all rectories with cure of souls, vicarages, perpetual curacies, donatives, endowed public chapels and parochial chapelries, and chapelries or districts belonging, or reputed to belong, or annexed, or reputed to be annexed, to any church or chapel.

1903, rr.
76-86.

Settled land.

78. Application for registration of settled land may be made by any person capable of being registered as proprietor, with the consent of the other persons (if any) whose consent or concurrence is necessary to a sale by that person.

79. Where application is made for registration with possessory title, a statement in writing of the proper restriction shall be left with the application, or the registrar shall be furnished with the information necessary to enable him to frame the proper restriction.

80. In framing restrictions for the protection of settled land it shall not be the duty of the trustees or of the registrar to protect the interests of any person who would not have been a necessary party to a sale or mortgage thereof if the land had been unregistered; but it shall be the duty of the trustees, or, if there are no trustees, of the registrar, to give notice of the restrictions to such of the beneficiaries (if any) as the registrar shall direct, and any such person can, if he desires (but at his own risk), lodge a caution or apply for an inhibition.

81. The restrictions given in forms 6 to 12 in the first schedule hereto shall apply respectively to the various cases set forth in those forms, and may be modified according to circumstances as the parties may require and the registrar may deem fit.

82. The settlement, whether consisting of one or of several documents, or a copy or abstract thereof, may be filed in the registry for safe custody and future reference. It shall not be referred to in the register, but shall be filed separately under the number of the title to which it relates.

Land held for charitable uses.

1903, rr.
78-86.

83. The person or persons in whom is vested any land for the sale of which the consent of the Charity Commissioners is by statute required, and (where any land is vested in the Official Trustee of charity lands) the administering trustees of the charity, shall for the purposes of section 68 of the Act of 1875 be deemed to be trustees of the land with a power of sale, and the Charity Commissioners shall for the purposes of that section be deemed to be persons whose consent is required to the exercise of the power of sale, and may consent to an application made under that section accordingly. When the land is vested in the administering trustees they shall on an application made with such consent be registered as the first proprietors of it. When the land is vested in the Official Trustee of charity lands he shall be registered as the first proprietor of it, (1) on the production of a conveyance to him, or (2) on the production of an official copy of the order of the Court, or an order of the said Commissioners vesting the land in him, accompanied in either case by a conveyance (if any) to the administering trustees. The official trustee may also on an application showing that under some statute the land is vested in him, and the production of evidence that the requirements of such statute have been complied with, be registered as proprietor. In either case a restriction shall be entered in the register and in the land certificate in form 13 in the first schedule hereto.

84. The Charity Commissioners may, by a writing under the hand of their secretary, give a general consent to the registration of lands held for charitable uses, or a consent limited to certain classes of cases, and upon such terms, as to notices restrictions and otherwise, as they may, with the concurrence of the registrar, think fit.

85. Nothing in rules 83 and 84 shall apply to land held for charitable uses which can be sold without the consent of the Charity Commissioners. And if the Charity Commissioners, by a writing under the hand of their secretary, certify in any case that any land can be sold without their consent, such certificate shall be conclusive for the purposes of registration.

86. As regards land held for charitable uses which are solely educational, in rules 83, 84, and 85 the words "Board of Education" shall be deemed to be substituted for the words "Charity Commissioners," but in rule 83 the words "said

Commissioners" shall nevertheless mean "Charity Commissioners."

1875, ss.
69-73.

69. Any two or more persons entitled for their own benefit, concurrently or successively, or partly in one mode and partly in another, to such estates, rights, or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as proprietor of the land, may (*subject as in this Act mentioned with respect to the number of persons to be registered in respect of the same land*), apply to the registrar to be registered as joint proprietors, in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that any individual proprietor may be registered.

Words in italics repealed, in effect, by 1897, s. 14 (1), sched. 1 (repealing s. 83 (2)).

Disclosure of Documents.

70. Before the completion of the registration of any land in respect of which an examination of title is required, the vendor and his solicitor, in cases where the applicant is a person who has contracted to buy such land, and in all other cases the applicant for registration and his solicitor, shall each, if required by the registrar, make an affidavit or declaration that to the best of his knowledge and belief all deeds, wills, and instruments of title, and all charges and incumbrances affecting the title to the land which is the subject of the application, and all facts material to such title, have been disclosed in the course of the investigation of title made by the registrar. The registrar may require any person making an affidavit or declaration in pursuance of this section to state in his affidavit or declaration what means he has had of becoming acquainted with the several matters referred to in this section; and if the registrar is of opinion that any further or other evidence is necessary or desirable, he may refuse to complete the registration until such further or other evidence is produced.

71. When an application has been made to the registrar for the registration of any land, if any person has in his possession or custody any deeds, instruments, or evidences of title relating to or affecting such land, to the production of which the applicant, or any trustee for him is entitled, the registrar may require such person to show cause, within a time limited, why he should not produce such deeds, instruments, or evidences

of title to the registrar, or otherwise, as the registrar may ^{1875, ss.} deem fit; and, unless cause is shown to the satisfaction of the ⁶⁹⁻⁷³ registrar within the time limited, such deeds, instruments, and evidences of title may be ordered by the registrar to be produced at the expense of the applicant, at such time and place, and in such manner, and on such terms as the registrar thinks fit.

Any person aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the court, which may annul or confirm the order of the registrar with or without modification.

If any person disobeys any order of the registrar made in pursuance of this section, the registrar may certify such disobedience to the court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the court in the same manner in all respects as if the order made by the registrar were the order of the court.

72. A person shall not be registered as proprietor of land until, if required by the registrar, he has produced to him such documents of title as will in the opinion of the registrar, when stamped or otherwise marked, give notice to any purchaser or other person dealing with such land of the fact of the registration, and the registrar shall stamp or otherwise mark the same accordingly, or until he has otherwise satisfied the registrar that the fact of such registration cannot be concealed from a purchaser or other person dealing with the land.

[In the case of registration with a possessory title, the registrar may act on such reasonable evidence as may be prescribed as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstances.]

Paragraph in brackets added by 1897, sched. 1.

Costs.

73. All costs, charges, and expenses that are incurred by any parties in or about any proceedings for registration of land shall, unless the parties otherwise agree, be taxed by the taxing officer of the Court of Chancery as between solicitor and client, but the persons by whom and the proportions in which such costs, charges, and expenses are to be paid shall be in the discretion of the registrar, and shall be determined according to orders of the registrar, regard being had to the

1875, ss.
69-73.

following provision; namely, that any applicant under this Act, is liable *primâ facie* to pay all costs, charges, and expenses incurred by or in consequence of his application, except in a case where parties object whose rights are sufficiently secured without their appearance, or where any costs, charges, or expenses are incurred unnecessarily or improperly, and subject to this proviso, that any party aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the court, which may annul or confirm the order of the registrar, with or without modification.

If any person disobeys any order of the registrar made in pursuance of this section, the registrar may certify such disobedience to the court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the court in the same manner in all respects as if the order made by the registrar were the order of the court.

1897, s.
10.

10. Every person who (not being a barrister or a duly certificated solicitor, notary public, conveyancer, special pleader, or draftsman in equity) either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument of transfer or charge, or an application to register restrictive conditions, or to alter or discharge, or alter the priority of a registered charge, or any other prescribed instrument, shall incur a fine not exceeding fifty pounds, which shall be recoverable before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided that this section shall not extend to—

- (a) any public officer drawing or preparing instruments and applications in the course of his duty; or
- (b) any person employed merely to engross any instrument or application.

1903, rr.
334-336,
sched. 2.

Costs.

334. All costs incurred in any proceeding in the registry shall be in the discretion of the registrar, having regard to the provisions as to costs contained in the Acts and these Rules; and shall, unless the parties otherwise agree, be taxed as the registrar shall direct by the taxing officers of the Supreme Court. Any order made by the registrar as to costs may be enforced in the mode provided by section 73 of the Act of 1875 with respect to costs, charges, and expenses incurred in or about proceedings for registration of land.

335. All costs of and incident to the examination and proof of title (including fees of counsel when not provided to be borne by the registry) and the costs of all searches and inquiries in relation to the title shall be paid by the applicant. ^{1903, rr. 334-336, sched. 2.}

336. The remuneration of solicitors in, or incidental to, or consequential on the registration of land and transactions in the registry shall be regulated in the matters hereinafter mentioned as follows:—

(A.) For the registration of freehold or leasehold land with an absolute or qualified title, or the registration of leasehold land with a good leasehold title:—

(i.) Where the title has been deduced or investigated by the solicitor on the occasion of a sale purchase or mortgage inducing registration, or where a good leasehold title is registered in the name of the original lessee, or where a transfer is made from the register kept under the Land Registry Act, 1862, the Remuneration Order, 1882, excepting Part I. of schedule I. to that Order, shall regulate the remuneration.

(ii.) In cases not otherwise provided for, the remuneration shall be that prescribed in Part I. of the second schedule hereto.

(B.) For the registration of freehold or leasehold land with a possessory title:—

(i.) Where the solicitor has acted for the applicant on the occasion of

(a) a purchase of freehold or leasehold land inducing registration, or

(b) a grant of a lease inducing registration, one guinea for every £1000, or part of £1000, in value, with a maximum fee of ten guineas.

(ii.) In cases not otherwise provided for, the remuneration shall be that prescribed in Part II. of the second schedule hereto.

(C.) For every completed transfer, charge, exchange, or partition of registered land or of a registered charge:—

(i.) Where no title outside the register is investigated, the remuneration shall be that prescribed in Part II. of the second schedule hereto.

(ii.) Where title outside the register is investigated, the Remuneration Order, 1882, excepting Part I. of schedule I. to that Order, shall regulate the remuneration for the preparation and investigation

1903, rr.
334-336,
sched. 2.

of the title and for completing the transaction on the register.

(D.) In applying the scales in the second schedule hereto and in paragraph (B.) of this rule to the entry of the original grantee of freehold land wholly or partly in consideration of a rent, or of the original lessee of leasehold land, the remuneration shall be calculated upon the value of the rent taken at 25 years' purchase, plus the amount of the money payment or premium if any. Provided that the remuneration for registration, where no title is investigated, shall not exceed the charges of the solicitor of the grantee or lessee under the Remuneration Order, 1882, for perusal of the draft conveyance or lease and for completion.

(E.) In all cases in which a solicitor would be entitled to charge under Part I. of schedule I. of the Remuneration Order, 1882, for negotiating a sale, purchase, or loan, or for conducting a sale by auction, he shall be entitled to make the same charges in respect of a similar transaction respecting registered land.

(F.) The remuneration hereby authorized shall not include the disbursements, extra work, business or proceedings which under section 4 of the Remuneration Order, 1882, are not to be included in the remuneration prescribed by schedule I. to that Order.

(G.) When a solicitor is concerned for the proprietor of land and also for a person taking a charge thereon, he is to be entitled to receive the charges of the solicitor of the person taking the charge, and one-half of those that would be allowed to the proprietor's solicitor up to £5000, and on any excess above £5000 one-fourth thereof.

(H.) If the solicitor conducting the business acts on behalf of several parties having distinct interests proper to be separately represented, he is to be entitled to make for each such party after the first, an additional charge not exceeding £2 2s. in each case.

(I.) In all cases to which the scales fixed herein or in the second schedule hereto apply, a solicitor may, before undertaking the business, by writing under his hand communicated to the client, elect that his remuneration shall be according to the Remuneration Order, 1882, excepting schedule I. to that Order.

(J.) In all transactions, the remuneration for which is not hereby provided for, the Remuneration Order, 1882, excepting Part I. of schedule I. to that Order, shall regulate the remuneration of the solicitor.

1903, rr.
334-336,
sched. 2.

The second schedule.

Solicitor's remuneration. (Rule 336.)

Part I.

Scale of charges for first registration with absolute or qualified title.

For the first £1000 in value, 30s. per £100.

For the second and third £1000, 20s. per £100.

For the fourth and each subsequent £1000 up to £10,000, 10s. per £100.

And for each subsequent £1000 up to £100,000, 5s. per £100.

A minimum charge of £3 is to be made where the value is under £100, and a minimum charge of £5 where the value is £100 or over.

Fractions of £100 under £50 are to be reckoned as £50.

Fractions of £100 above £50 are to be reckoned as £100.

Where the value exceeds £100,000, the charge is to be as on £100,000.

Part II.

Scale of charges for (1) first registration with possessory title and (2) transfers, charges, exchanges, and partitions of registered land or a registered charge.

Value of land or amount of charge.	Scale of charges.
Not exceeding £1000	10s. 6d. for every £100 or part of £100.
Exceeding £1000 and not exceeding £20,000	£5 5s. for the first £1000 and £1 1s. for every subsequent £2000 or part of £2000.
Exceeding £20,000 and not exceeding £40,000	£15 15s. for the first £20,000 and £1 1s. for every subsequent £4000 or part of £4000.
Exceeding £40,000	£21 for the first £40,000 and £1 1s. for every subsequent £10,000 or part of £10,000 up to a maximum of £26 5s.

References to the Court.

1875, ss.
74-77.

Doubtful questions arising on title.

74. Whenever, upon the examination of the title to any land the registrar entertains a doubt as to any matter of law or fact arising upon such title, he may, upon the application of any party interested in such land refer a case for the opinion of any of Her Majesty's superior courts, with power for the court to direct an issue to be tried before any jury for the purpose of determining any fact; the registrar may also name the parties to such case, and the manner in which the proceedings in relation thereto are to be brought before the court to which such case is referred.

75. The opinion of any court to whom any case is referred by the registrar shall be conclusive on all the parties to such case, unless the court before whom such case is heard permits an appeal to be had.

76. Where any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or persons yet unborn, are interested in the land in respect of the title to which any question arises as aforesaid, any other persons interested in such land may apply to "the court," as defined by this Act, for a direction that the opinion of the court to whom the case is referred under this Act shall be conclusively binding on such infants, married women, idiots, lunatics, persons of unsound mind, persons beyond the seas, or unborn persons.

77. The court as defined by this Act shall hear the allegations of all parties appearing before it. It may disapprove altogether of [qy. or] may approve, either with or without modification, of the directions of the registrar in respect to any case referred as to the title of land; it may also, if necessary, appoint a guardian or other person to appear on behalf of any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or unborn persons; and if such court is satisfied that the interests of the persons labouring under disability, absent, or unborn, will be sufficiently represented in any case, it shall make an order declaring that all persons, with the exceptions (if any) named in the order, are to be conclusively bound, and thereupon all persons with such exceptions (if any) as aforesaid, shall be conclusively bound by any decision of the court having cognisance of the case in which such persons are concerned.

Certificates.

As to land certificates, office copies of leases, and certificates ^{1875, rr.}
of charge. ^{78-81.}

78. If any land certificate or office copy of a registered lease or certificate of charge is lost, mislaid, or destroyed, the registrar may, upon being satisfied of the fact of such loss, mislaying, or destruction, grant a new land certificate or office copy or certificate of charge in the place of the former one.

Repealed by 1897, sched. 1.

79. The registrar may, upon the delivery up to him up [sic] of a land certificate or of an office copy of a registered lease or of a certificate of charge, grant a new land certificate or office copy of a lease or certificate of charge in the place of the one delivered up.

80. Any land certificate or certificate of charge shall be *prima facie* evidence of the several matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease.

81. *Subject to any registered estates, charges, or rights, the deposit of the land certificate in the case of freehold land, and of the office copy of the registered lease in the case of leasehold land, shall, for the purpose of creating a lien on the land to which such certificate or lease relates, be deemed equivalent to a deposit of the title deeds of the land.*

Repealed by 1897, sched. 1.

8.—(1.) So long as a land certificate, office copy of a ^{1897, s. 8.} registered lease, or certificate of charge, is outstanding, it shall be produced to the registrar on every entry in the register of a disposition by the registered proprietor of the land or charge to which it relates, and on every registered transmission or rectification of the register, and a note of every such entry, transmission, or rectification shall be officially endorsed on the certificate or office copy, and the registrar shall have the same powers of compelling the production of certificates and office copies as are conferred on him by sections one hundred and nine and one hundred and ten of the principal Act as to the production of maps, surveys, books, and other documents.

(2.) Where a land certificate or office copy of a registered

1897, s. 8. lease has been issued, the vendor shall deliver it to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate or office copy is sold, he shall, at his own expense, produce, or procure the production of, the certificate or office copy in accordance with this section for the completion of the purchaser's registration. Where the certificate or office copy has been lost or destroyed, the vendor shall pay the costs of the proceedings required to enable the registrar to proceed without it.

(3.) A new land certificate, office copy of a registered lease or certificate of charge, shall not be granted by the registrar in place of a former certificate, or office copy, which has been lost or destroyed, unless the applicant has filed with the registrar a statutory declaration and such other evidence, if any, as the registrar may think necessary, stating the fact and circumstances of the loss or destruction of the former certificate or office copy, nor until at least one advertisement of the application in the *London Gazette* and three advertisements in a London daily morning newspaper shall have been published at intervals of not less than seven days, and three advertisements in a local newspaper circulating in the district in which the land is situate, and such indemnity (if any) given as the registrar shall think fit.

(4.) Where a transfer of land is made by the registered proprietor of a charge, in exercise of the power of sale conferred by the charge, it may be registered, and a new land certificate may be issued to the purchaser, without production of the former land certificate, but the certificate of charge (if any) must be produced or accounted for in accordance with this section. Subject to any stipulation to the contrary the proprietor of a registered charge shall not be entitled to have custody of the land certificate, or to require a land certificate to be applied for.

(5.) (i.) On the first registration of freehold or leasehold land, and on the registration of a charge, a land certificate, office copy of the registered lease, or certificate of charge, as the case may be, shall be prepared, and shall either be delivered to the registered proprietor or deposited in the registry as the said proprietor may prefer ;

(ii.) If so deposited in the registry it shall be officially endorsed from time to time, as in this section provided, with notes of all subsequent entries in the register affecting the land or charge to which it relates ;

- (iii.) The registered proprietor may at any time apply ^{1897, s. 8.} for the delivery of the certificate or office copy to himself or to such person as he may direct, and may at any time again deposit it in the land registry ;
- (iv.) The preparation, issue, endorsement, and deposit in the registry of the certificate or office copy shall be effected without cost to the proprietor.

(6.) The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land or charge by deposit of the land certificate or office copy of registered lease, or certificate of charge ; and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled in fee simple or for the term or interest created by the lease for his own benefit, or by a mortgagee beneficially entitled to the mortgage.

Some obvious errors in punctuation, and in numeration of sub-sections have been corrected.

Certificates.

1903, rr.
258-268,
243-251.

258. A land certificate shall be in form 66 in the first schedule hereto and the land registry seal shall be affixed to it. It shall be made up in divisions, corresponding to the divisions of the register, so as to leave room for the addition thereto of subsequent entries in the register. For this purpose fresh pages may be added to the certificate from time to time as may be necessary.

259. A certificate of charge shall certify the registration of the charge and shall contain (1) an office copy of the charge, (2) a description (if no description is contained in the charge) of the land affected, (3) the name and address of the registered proprietor of the charge, and (4) a list of the prior incumbrances (if any) appearing on the register. There shall also be added such further particulars, if any, as the registrar shall think fit and the land registry seal shall be affixed to it. Notes of subsequent dealings affecting the charge shall from time to time be entered on the certificate.

260. Where an office copy of an entry in the register or of the filed plan of the land or of any document filed in the registry is annexed to any certificate, it shall for the purposes of section 80 of the Act of 1875 be deemed to be contained in the certificate itself.

1903, rr.
258-268,
243-251.

261. Any one of two or more persons registered as tenants in common of land or of a charge may, at his option, have a separate certificate. Only one certificate shall be issued unless there be a request for two or more.

262. Whenever a certificate is delivered out of the registry a receipt shall be signed by the recipient.

263. Except in the cases mentioned in section 8, subsections 3 and 4 of the Act of 1897, and in cases falling under rules 152 and 164 no new certificate shall be issued unless the existing certificate is delivered up to the registrar to be cancelled.

264. Where a certificate is required to be produced to the registrar but cannot be produced at the registry without disproportionate trouble, expense, or delay, the registrar may authorize an officer of the registry, or a solicitor, to inspect it elsewhere, at the expense of the applicant, and to make the proper endorsement (if any) thereon, and to authenticate the same on behalf of the registry.

265. On any application for registration made by or with the consent of the registered proprietor of the land or of a charge or incumbrance, the registrar may require the production of the land certificate or certificate of charge or incumbrance, and may refuse to proceed with the application until the certificate is produced.

266. When a certificate is produced on the closing of a title or the discharge of a charge or incumbrance, it shall be retained in the registry and cancelled.

267. The registrar shall have power to retain a certificate produced under section 8 of the Act of 1897 for the purpose of making an entry thereon. On the registration of any transaction for which the production of a land certificate or certificate of charge is required, the certificate shall, before it is re-issued, be made to correspond with the register.

268. A certificate may be deposited in the registry with written directions that it is to be held for a specified purpose only. Subject to rule 267 a certificate so deposited shall not be used, or be deemed to be in the registry for any other purpose without the written consent of the person by whom such directions were given, or his successor in title or his solicitor.

Notice of deposit of certificate.

1903, rr.
243-251.

243. Any person with whom a land certificate or certificate of charge is deposited as security for money may by registered letter, or otherwise in writing, give notice to the registrar of such deposit, and of his name and address; and shall describe (by reference to the county and parish or place and number of the title) the land to which the certificate relates, and on receipt of such notice the registrar shall enter the same in the charges register, and shall give a written acknowledgment of its receipt. Such notice shall operate as a caution under section 53 of the Act of 1875.

244. A person applying for registration as proprietor of land or of a charge may, whether the land or charge is already registered or not, create a lien on the land or charge equivalent to that created by the deposit of a certificate by giving notice in writing, signed by himself, to the registrar, that he intends to deposit the land certificate or certificate of charge when issued with another person as security for money.

245. The notice of such intended deposit shall state the name and address of the person with whom the certificate is to be deposited, and shall describe the land or charge to which the certificate relates by reference to the county and parish or place and number of the title or (in the case of unregistered land), by reference to the deed or document by which the land was last dealt with, or otherwise to the satisfaction of the registrar. On receipt of such notice the registrar shall enter the same in the register and give a written acknowledgment thereof.

246. A notice of intended deposit shall operate as a caution under section 53 of the Act of 1875. The certificate shall, when issued or re-issued, be delivered by the registrar to the person named in that behalf in the notice.

247. Notice of deposit or intended deposit of a certificate shall not be entered while another such notice is on the register, nor as to part only of the land or charge to which the certificate relates.

248. If while a notice of deposit or intended deposit is on the register the certificate is left in the registry for any purpose, it shall be dealt with notwithstanding the notice, and shall be returned to the person leaving it or as he may in writing direct.

249. So long as a notice of such deposit is on the register

1903, rr.
243-251.

no new certificate shall be issued under section 8 sub-section 3 of the Act of 1897, nor shall any new certificate be issued under sub-section 4 of the same section on a sale under a charge subsequent in priority to the notice of deposit without notice similar to that under a caution.

250. The notice of deposit may be withdrawn from the register on a written request signed by the person who gave such notice, or his successor in title; or, when such person consents in writing, on a request signed by the registered proprietor of the land or charge: accompanied in each case by the land certificate, or certificate of charge.

251. The lien created by the deposit of a certificate or by notice to the registrar under rule 244 shall be subject to any unregistered estates, rights, or interests protected by caution or other entry on the register at the time of the creation of the lien, and in the case of good leasehold qualified or possessory title, to estates rights and interests excepted from the effect of registration.

Special Classes of Land.

1875, s.
82.

Special hereditaments.

82. The registrar may register the proprietor of any advowson, rent, tithes impropriate, or other incorporeal hereditament of freehold tenure, *enjoyed in gross*, also the proprietor of any mines or minerals where the same have been severed from the land, in the same manner and with the same incidents in and with which he is by this Act empowered to register land, or as near thereto as circumstances admit.

The registrar may also in the prescribed manner register any fee farm grant, or other grant, reserving rents or services to which the fee simple estate in any freehold land about to be registered or registered may be subject, with such particulars of the land or services, and the conditions annexed to the non-payment or non-performance or otherwise of such rent and services as may be prescribed, and any record so made shall be conclusive evidence as to the rents, services, and conditions so recorded, and such fee simple estate as last aforesaid shall be subject thereto accordingly.

Words in italics repealed by 1897, sched. 1.

Manors, advowsons, rents, tithes, and other incorporeal hereditaments, mines and minerals severed from the land, cellars, flats, and similar hereditaments, and undivided shares in land. 1903, rr. 71-77.

71. Application for registration of manors, advowsons, rents, tithes, or other incorporeal hereditaments, mines and minerals severed from the land, cellars, flats, and other similar hereditaments, and undivided shares in land, shall be made according to the rules above prescribed in the case of absolute and possessory titles respectively, and shall be proceeded with in the same manner subject only to such modifications as the nature of the case may require and the registrar may approve.

72. On the registration of a manor the applicant shall leave in the registry a plan of the lands (if any) alleged to be the demesne lands of the manor, other than lands held by copy of court roll.

73. On the registration of a rent or tithes or rent charge in lieu of tithe the applicant shall leave in the registry, with the application, a plan of the lands out of which they are issuing, so far as they can be conveniently identified and described, or such other information as may be necessary for identifying such lands, so far as practicable, on the ordnance map.

74. On the registration of mines and minerals severed from the land, a plan showing as accurately as is practicable the surface under which the mines and minerals lie shall be deposited in the registry, together with such other plans, sections, and further descriptions (if any) as the registrar may deem necessary for the purpose of identifying such mines and minerals, and also together with full particulars of any appurtenant rights of access, or rights incidental to the working of the mines and minerals that may be subsisting and intended to be entered in the register.

75. On the registration of a proprietor of a flat or floor, or part of a flat or floor, of a house or of a cellar or tunnel or other underground space apart from the surface, a plan shall be furnished of the surface under or over which the tenement to be registered lies, and such further verbal or other description as the registrar may deem necessary, together with notes of any appurtenant rights of access, in common with others or not, or obligations affecting other tenements for the benefit of the tenement the title to which is being registered.

76. Before completing any registration under rules 74 and

1903, rr.
71-77.

75 with an absolute, qualified, or good leasehold title, notices shall be given in the case of mines and minerals to the owners and to the occupiers of the land under which they lie, and in the case of cellars, flats, and other similar hereditaments to the owners and to the occupiers of the other tenements immediately above and below and (where in the same building) adjoining laterally to the tenement which is the subject of the application, and to such other persons (if any) as the registrar may direct.

77. On the registration of two or more persons as proprietors of undivided shares in land, the registration shall be made under one title, unless the registrar shall otherwise direct, and the share held by each proprietor shall be specified in the proprietorship register. If the shares are registered under separate titles, the share to which each title relates shall be stated in the property register.

Trustees, Undivided Shares, Co-proprietors, Duties, Description.

1875, s.
83, sub.-
ss. 1-3.

General provisions.

83. The following enactments shall be made with respect to registration of title:—

- (1.) *There shall not be entered on the register or be receivable by the registrar, any notice of any trust, implied, express, or constructive ;*

Repealed, and the following substituted, by 1897, sched. 1.

[Neither the registrar nor any person dealing with registered land or a charge shall be affected with notice of a trust, express, implied, or constructive; and references to trusts shall, as far as possible, be excluded from the register;] and

- (2.) *No person shall be registered as proprietor of any undivided share in any land or charge, and a number of persons exceeding the prescribed number shall not be registered as proprietors of the same land or charge; and if the number of persons showing title exceeds such prescribed number, such of them not exceeding the prescribed number as may be agreed upon, or as the registrar may in case of difference decide, shall be registered as proprietors; and*

Repealed by 1897, s. 14 and sched. 1.

- (3.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge, an entry may, *with their consent*, be made on the register, to the effect that when the number of such proprietors is reduced below a certain specified number, no registered disposition of such land or charge shall be made, except under the order of the court [or of the registrar, after inquiry into title, subject to an appeal to the court.

1875, s.
83, sub-
ss. 1-3.

Subject to general rules, wherever registered land or a charge is to be entered in the names of two or more joint proprietors, the registrar shall make such entry under this sub-section as may be prescribed, unless it is shown to his satisfaction that the joint proprietors are entitled for their own benefit;] and

Words in italics repealed, and words in brackets added, by 1897, sched. 1.

Entry restraining a disposition by a sole surviving proprietor. 1903, rr.
224, 225.

224. An entry under section 83, sub-section 3, of the Act of 1875 shall be in form 57 in the first schedule hereto, and need only be made where the deed or instrument, by virtue of which the joint proprietors are registered, shows an intention that the survivor of them shall not have power to dispose of the land or charge, or where the registrar for any special reason considers that such an entry would be desirable. Such an entry may at any time be made with the consent of the joint proprietors.

225. When such an entry has been made and the joint proprietors have been reduced to the number specified therein, the registrar shall, before entering on the register any disposition by the registered proprietor, require the production of the equitable title; and may give such notices to the persons, or some or one of the persons, equitably entitled as he may deem expedient.

- (4.) Where land is registered in the names of husband and wife as co-proprietors, no registered disposition of such land shall take place until the wife, if alive, has been examined in the prescribed manner and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition;

1875, s.
83, sub-
ss. 4-8.

[This sub-section shall not apply to the case of any woman married on or after 1st January, 1883, or to any property to which a married woman is entitled for her separate use;] and

Paragraph in brackets added by 1897, sched. 1.

1875, s.
83, sub-
ss. 4-8.

- (5.) *Registered land shall be described in such manner as the registrar thinks best calculated to secure accuracy, but such description shall not be conclusive as to the boundaries or extent of the registered land ; and*
- (6.) *No alteration shall be made in the registered description of land, except under the order of the court or by way of explanation ; but this provision shall not be construed to extend to registered dealings with registered land in separate parcels by the registered description although such land was originally registered as one estate ; and*

Repealed by 1897, s. 14 and sched. 1.

- (7.) Previously to registering any proposed purchaser as first proprietor of any land or to registering any disposition of land, it shall be the duty of the registrar to ascertain that all such stamp duties have been satisfied as would be payable if the land had been conveyed by an unregistered disposition to such proposed purchaser, or the disposition to be registered had been an unregistered disposition :
- (8.) The provisions of this Act with respect to the liability of registered land to succession duty and to the grant of a certificate by the Commissioners of Inland Revenue in respect of the exemption from succession duty, and to the notification of such exemption on the register, and to the effect of such notification, shall apply with the necessary variations to a registered charge under this Act.

1897, s.
14.

14.—(1.) So much of section eighty-three of the principal Act as prohibits the registration of undivided shares, and limits the number of co-proprietors, and relates to the description, boundaries, and extent, and alteration of the description of registered land is repealed.

(2.) Registered land shall be described in the prescribed manner by means of the ordnance map, together with such further verbal particulars (if any) as the applicant for registration may desire, and the registrar, or the court, if the applicant prefers, may approve, regard being had to ready identification of parcels, correct description of boundaries, and, as far as may be, uniformity of practice.

Maps and verbal descriptions of land.

1903, rr.
269-282.

269. The ordnance map, on the largest scale published, shall be the basis of all registered descriptions of land.

270. The boundaries of the land shall be shown by an edging of red colour. Enlargements and explanatory notes may also be made where it is considered desirable to add them.

271. Where for any reason a plan cannot in the opinion of the registrar be satisfactorily made at once, the registration may be completed provisionally without a filed plan—the property register defining the land as precisely as possible and the reference to the plan being omitted from the land certificate. A plan shall nevertheless be made as soon as practicable, and the property register shall then be altered accordingly and a corresponding alteration shall also be made on the land certificate at the same time or on the earliest opportunity afterwards.

272. If it is desired to indicate on the filed plan, or otherwise to define in the register, the precise position of the boundaries of the land or any parts thereof, notice shall be given to the owners and occupiers of the adjoining lands, in each instance, of the intention to ascertain and fix the boundary, with such plan, or tracing, or extract from the proposed verbal description of the land as may be necessary, to show clearly the fixed boundary proposed to be registered; and any question of doubt or dispute arising therefrom shall be dealt with as provided by these Rules.

273. When the position and description of the boundaries of the land have been thus ascertained and determined, the necessary particulars shall be added to the filed plan and a note shall be made in the property register to the effect that the boundaries have been fixed. The plan shall then be deemed to define accurately the fixed boundaries.

274. Except in cases in which it is noted in the property register that the boundaries have been fixed, the map shall be deemed to indicate the general boundaries only. In such cases the exact line of the boundary will be left undetermined—as for instance whether it runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it; or whether or not the land registered includes the whole or any portion of an adjoining road or stream. When a general boundary only is desired to be entered in the register, notice to the owners of the adjoining lands need not be given.

1903, rr.
269 282.

This rule shall apply notwithstanding that part or the whole of a wall, fence, road, stream, or other boundary is expressly included in or excluded from the title or that it forms the whole of the land comprised in the title.

275. Where, and so far as, physical boundaries or boundary marks do not exist, the fullest available particulars of the boundaries shall be added to the plan.

276. A plan shall not be accepted for registration until it has been approved by an officer of the registry, or by such other person as the registrar shall authorize for the purpose.

277. When the necessary plan cannot be prepared without a revision of the ordnance map, the officers of the registry shall, if required by the applicant, make the necessary revision. In districts where registration of title is compulsory, the revision shall be made without charge.

278. When an applicant desires to enter any verbal particulars or description of land on the register, they shall be submitted to the registrar for his approval. Such particulars shall contain a reference to the filed plan of the land, and shall be compared therewith by an officer of the registry.

279. When such particulars consist of or refer to a detailed list by schedule or otherwise of separate portions of the land, each portion so detailed shall be distinguished, if possible, by a number or other reference in the list and on the filed plan.

280. In districts where registration of title is compulsory, the registrar shall be furnished by the local authorities with particulars of alterations of names and numbers of streets and houses from time to time made, for future reference; and any correction of the register rendered necessary by such alterations may be made.

281. Renewal, revision, or correction of plans and verbal descriptions of land, may be made at any time on the application in writing of the registered proprietor, upon the production of such evidence and the giving of such notices as the registrar may deem necessary.

282. The registrar shall decide any question arising on a conflict between the verbal particulars and the plan, but the plan shall prevail unless he otherwise directs. On such decision being given the particulars and plan shall be altered accordingly.

Restrictive Conditions.

84. Where any land is about to be registered, or any registered land is about to be transferred to a purchaser for valuable consideration, there may be registered as annexed thereto, subject to general rules and in the prescribed manner, a condition that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition running with or capable of being legally annexed to land, and the first proprietor and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition; nevertheless, any such condition may be modified or discharged by order of the court, on proof to the satisfaction of the court that such modification will be beneficial to the persons principally interested in the enforcement of such condition.

[Conditions may be annexed to land at any time, and the section shall apply to any restrictive condition capable of affecting assigns by way of notice.]

Paragraph in brackets added by 1897, sched. 1.

Restrictive conditions.

1903, r.
223.

223. An application to register restrictive conditions under section 84 of the Act of 1875 as amended by the Act of 1897, if made at any other time than on first registration or on a transfer, shall state the conditions to be registered, and shall be signed by the applicant; and if he is not the registered proprietor of the land, by such proprietor also; and the signatures shall be attested. The concurrence of the proprietor of a registered incumbrance or charge may be expressed in writing signed by him and attested, and an entry shall be made in the register of his concurrence. In the absence of such entry the proprietor of a prior charge or incumbrance shall be unaffected by such conditions. A copy of the conditions or of the document containing them shall be delivered at the registry.

Trustee Acts.

85. All the provisions of the Trustee Act, 1850, and of any Act amending the same, shall apply to land and charges

- 1875, s.
85. registered under this Act, but this enactment shall not prejudice the applicability to such land and charges of any provisions of such Acts relating to land or choses in action.

Indemnity of Registry Officers.

- 1875, s.
86. 86. The registrar shall not, nor shall the assistant registrar nor any person acting under his authority, or under any order or general rule made in pursuance of this Act, be liable to any action, suit, or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act, or any order or general rule made in pursuance of this Act.

Married Women, Infants, etc., Corporations.

1875, s.
87.

As to married women.

87. Where a married woman, entitled for her separate use, and not restrained from anticipation, is desirous of giving any consent, or becoming party to any proceeding under this Act, she shall be deemed to be an unmarried woman, but when any other married woman is desirous of giving any consent, or becoming party to any proceeding under this Act she shall be examined in the prescribed manner, and it shall be ascertained that she is acting freely and voluntarily, and the court may, where it sees fit, appoint a person to act as the next friend of a married woman for the purpose of any proceeding under this Act, and may from time to time remove or change such next friend.

1903, rr.
338-340.

Examinations of married women.

338. When any married woman has to be examined in regard to any proceeding in the registry, the matter or thing to which her consent is to be given, or the act to be done by her, or the proceeding to be taken, shall be reduced into or stated in writing before the examination is made.

339. The examination may be made by the registrar, or any officer of the registry authorized by him in writing or by any person authorized by law to take acknowledgments of deeds by married women.

340. When the examination is not made by the registrar

the person, by whom it is made, shall certify the result thereof ^{1903, rr.} to the registrar in writing in form 71 in the first schedule ^{338-340.} hereto, or to the like effect. And if such person is not an officer of the registry, the certificate shall be verified by a statutory declaration in form 72 in the same schedule, or to the like effect.

As to infants and lunatics.

^{1875, s.}
^{88.}

88. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in relation to any land or charge under this Act, is an infant, idiot, or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act; where there is no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person is of unsound mind or incapable of managing his affairs, but has not been found lunatic under an inquisition, it shall be lawful for the court to appoint a guardian of such person for the purpose of any proceedings under this Act, and from time to time to change such guardian.

Corporations, etc.

^{1903, r.}
^{256.}

256. Where an application for registration as proprietors of land or of a charge is made by a corporation, or a body of trustees, in whom, as such, property from time to time vests, there shall be produced such evidence as the registrar directs of incorporation, or of the provisions under which the property so vests as aforesaid, as the case may be, and in either case of the power to deal with the land or charge.

Notices.

As to notices.

^{1875, ss.}
^{89-92.}

89. Every person whose name is entered on the register as proprietor of land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish to the registrar a place of address in the United Kingdom.

1875, ss.
89-92.

90. Every notice by this Act required to be given to any person shall be served personally, or sent through the post in a registered letter marked outside "Office of Land Registry," and directed to such person at the address furnished to the registrar, and unless returned, shall be deemed to have been received by the person addressed within such period, not less than seven days, exclusive of the day of posting, as may be prescribed.

91. Her Majesty's Postmaster General shall give directions for the immediate return to the registrar of all letters marked as aforesaid, and addressed to any person who cannot be found, and on the return of any letter containing any notice, the registrar shall act in the matter requiring such notice to be given in manner prescribed.

92. A purchaser for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof.

1903, rr.
322-326.

Preparation and service of notices and summonses.

322. All notices and summonses (not being applications to the Court) required to be given or served for any purpose shall be prepared on the official forms and under the stamp of the registry. If the service of the notices or summonses is personal, it shall be proved by statutory declaration; if the service is through the post, it shall be made by registered letter, in conformity with section 90 of the Act of 1875; except in the case of notices under rule 118, which need not be registered.

323. Every notice issued or sent by or through the registry (other than notices sent under rule 118) shall fix a time within which any act or step required by such notice to be done or taken thereunder is to be done or taken; and shall state what will be the consequence of any omission to comply therewith. It shall also state in what manner and within what time any answer or objection or other communication arising out of such notice is to be made, and the address at or to which it is to be delivered or sent. All subsequent proceedings thereunder shall be conducted in accordance with these Rules; and, so far as they do not apply, in such manner as the registrar shall direct.

324. Every notice, sent through the post, shall unless returned by the Post Office, and in the absence of evidence of its actual delivery, be deemed to have been received by

the person addressed within seven days of its issue, exclusive ^{1903, rr.} of the day of posting, and the time fixed by the notice for ^{322-326.} taking any step thereunder is to be calculated accordingly. A copy of this rule shall be set out at the foot of or endorsed on each such notice.

325. On the return by the Post Office of any letter containing any notice, the registrar may either require any further notice to be given, or may authorize substituted service of the notice; or may proceed without notice, if, under the circumstances, and having regard to these Rules, he shall think fit to do so.

Addresses for service.

326. The address of any person as entered in the register shall, unless he shall otherwise direct, be his address for service. Any person may, if he desires, have two addresses entered in the register, to each of which all notices and other communications to him are to be sent.

Specific Performance, Rectification, Indemnity.

Specific performance.

1875, ss.
93-97.

93. Where a suit is instituted for the specific performance of a contract relating to registered land, or a registered charge, the court having cognizance of such suit may by summons, or by such other mode as it deems expedient, cause all or any parties who have registered estates or rights in such land or charge, or have entered up notices, cautions, or inhibitions against the same, to appear in such suit, and show cause why such contract should not be specifically performed, and the court may direct that any order made by the court in such suit shall be binding on such parties or any of them.

94. All costs incurred by any parties so appearing in a suit to enforce against a vendor specific performance of his contract to sell registered land or a registered charge shall be taxed as between solicitor and client, and unless the court otherwise orders, be paid by such vendor.

Rectification of the register.

95. Subject to any estates or rights acquired by registration in pursuance of this Act, where any court of competent juris-

1875, ss.
93-97.

diction has decided that any person is entitled to any estate, right, or interest in or to any registered land or charge, and as a consequence of such decision such court is of opinion that a rectification of the register is required, such court may make an order directing the register to be rectified in such manner as it thinks just.

96. Subject to any estates or rights acquired by registration in pursuance of this Act, if any person is aggrieved by any entry made or by the omission of any entry from the register under this Act, or if default is made, or unnecessary delay takes place in making any entry in the register, any person aggrieved by such entry, omission, default, or delay may apply to the court in the prescribed manner for an order that the register may be rectified, and the court may either refuse such application with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register.

97. The registrar shall obey the order of any competent court in relation to any registered land on being served with such order or an official copy thereof.

1903, rr.
151, 253.

151. When the power of disposing of registered land has, by the operation of any statute or statutory power or by order of court or by paramount title, become vested in some person other than the registered proprietor (as, for instance, in the case of a deed poll executed under section 77 of the Lands Clauses Consolidation Act, 1845, or of a declaration vesting an estate contained in or made under or by virtue of any statute, or of a sale by a mortgagee with a title paramount to the title registered) and the registered proprietor refuses to execute a transfer, or his execution of a transfer cannot be obtained, or can only be obtained after undue delay or expense, the registrar may, after due notice under these Rules to such proprietor, and on production of the land certificate, and such evidence as he may deem sufficient make such entry in or correction of the register as under the circumstances he shall deem fit.

This rule applies also to charges : r. 174, p. 312. And see r. 152, p. 324.

Formal alterations.

253. The registrar may, from time to time make any formal alterations in the register as to any change in the name address or description of any registered proprietor or otherwise as he may deem proper.

As to fraud.

1875, s.
98.

98. Subject to the provisions in this Act contained with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land which if unregistered would be fraudulent and void, shall, notwithstanding registration, be fraudulent and void in like manner.

7.—(1.) Where any error or omission is made in the register, or where any entry in the register is made or procured by or in pursuance of fraud or mistake, and the error, omission, or entry is not capable of rectification under the principal Act, any person suffering loss thereby shall be entitled to be indemnified in the manner in this Act provided. 1897, ss. 7, 21.

(2.) Provided that where a registered disposition would if unregistered be absolutely void, or where the effect of such error, omission, or entry, would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the register shall be rectified and the person suffering loss by the rectification shall be entitled to the indemnity.

(3.) A person shall not be entitled to indemnity for any loss where he has caused or substantially contributed to the loss by his act, neglect, or default, and the omission to register a sufficient caution, notice, inhibition, or other restriction to protect a mortgage by deposit or other equitable interest, or any estate or interest created under section forty-nine of the principal Act, shall be deemed neglect within the meaning of this sub-section.

(4.) Where the register is rectified under the principal Act by reason of fraud or mistake which has occurred in a registered disposition for valuable consideration, and which the grantee was not aware of and could not by the exercise of reasonable care have discovered, the person suffering loss by the rectification shall likewise be entitled to indemnity under this section.

(5.) The registrar may, if the applicant desires it, and subject to an appeal to the court, determine whether a right to indemnity has arisen under this section, and, if so, award indemnity. In the event of an appeal to the court, the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the court shall consider that the appeal is unreasonable.

(6.) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount

1897, ss.
7, 21. paid from any person who has caused or substantially contributed to the loss by his act, neglect, or default.

(7.) A claim for indemnity under this section shall be deemed a simple contract debt, and for the purposes of the Limitation Act, 1623, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might know, of the existence of his claim. This section shall apply to the Crown in like manner as it applies to a private person.

21.—(1.) For the purpose of providing indemnity payable under this Act, there shall be established an insurance fund to be raised by setting apart at the end of each financial year such portion of the receipts from fees taken in the land registry as the Lord Chancellor and the Treasury shall by order determine.

(2.) The insurance fund shall be invested in such names and manner as the Treasury from time to time direct.

(3.) If the insurance fund is at any time insufficient to pay indemnity for any loss chargeable thereon, the deficiency shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof; but any sum so paid out of the Consolidated Fund, or the growing produce thereof, shall be repaid out of the money subsequently standing to the credit of the insurance fund.

(4.) Accounts of the fund shall be kept, and be audited as public accounts, in accordance with such regulations as the Treasury from time to time make.

Criminal.

1875, ss.
99-103. 99. If in the course of any proceedings before the registrar or the court in pursuance of this Act any person concerned in such proceedings as principal or agent, with intent to conceal the title or claim of any person, or to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document or of any fact, the person so suppressing, attempting to suppress, or privy to suppression, shall be guilty of a misdemeanor, and upon conviction on indictment shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour, or to be fined such sum not exceeding five hundred pounds as the court before which he is tried may award.

100. If any person fraudulently procures, attempts to

fraudulently procure, or is privy to the fraudulent procure-^{1875, ss.}
ment of any entry on the register, or of any erasure from the⁹⁹⁻¹⁰³
register or alteration of the register, such person shall be
guilty of a misdemeanor, and upon conviction on indictment
be liable to imprisonment for any term not exceeding two
years, with or without hard labour, or to be fined such sum
not exceeding five hundred pounds as the court before which
he is tried may award; and any entry, erasure, or alteration
so made by fraud, shall be void as between all parties or
privies to such fraud.

101. If any person in any affidavit or declaration required
or authorized to be made for any purpose under this Act, or
any order or general rules made in pursuance thereof, wilfully
makes a false statement in any material particular, he shall be
guilty of a misdemeanor, and upon conviction on indictment
shall be liable to imprisonment, with or without hard labour,
for any term not exceeding two years, or to be fined such sum
not exceeding five hundred pounds as the court before which
he is tried may award.

102. No proceeding or conviction for any act declared by
this Act to be a misdemeanor shall affect any remedy which
any person aggrieved by such act may be entitled to, either
at law or in equity.

103. Nothing in this Act contained shall entitle any person
to refuse to make a complete discovery by answer in any legal
proceeding, or to answer any question or interrogatory in any
civil proceeding, in any court of law or equity, or in the courts
of bankruptcy; but no answer to any such bill, question, or
interrogatory shall be admissible in evidence against such
person in any criminal proceeding under this Act.

Inspection, Searches.

Inspection of register.

1875, s.
104.

104. Subject to such regulations and exceptions and to
the payment of such sums as may be fixed by general rules,
any person registered as proprietor of any land or charge, and
any person authorized by any such proprietor, or by an order
of the court, or by general rule, but no other person, may
inspect and make copies of and extracts from any register or
document in the custody of the registrar relating to such land
or charge.

1903, rr.
283-295.

Official search of the index map.

283. Any person may apply to the registrar in writing to make an official search in the index map and to issue a certificate of the result. The application shall describe the land to which it relates by means of a copy of or extract from the ordnance map on the largest scale published. The registrar shall on receipt of such application make the search and issue a certificate accordingly. The certificate shall state whether the land is registered or not, and, if registered, whether as freehold or leasehold land, or otherwise as the case may be, and in the case of leasehold land shall also state the date of and parties to the lease.

Inspection searches and copies of the register.

284. Any entry in the register, and any document in the custody of the registrar and referred to in the register, may be inspected by or under the authority of the registered proprietor of the land or of any charge or incumbrance thereon.

285. The property register and the filed plan of any title may be inspected by any person interested in the land or in any adjoining land or in a charge or incumbrance thereon. Other entries in the register and documents referred to therein and the statutory declaration in support of a caution may be inspected by any person interested, on giving three days' notice to the registered proprietor or on satisfying the registrar that, by reason of the death of a sole registered proprietor, or for any other sufficient reason, he cannot obtain the requisite authority for or consent to such inspection, and that such inspection is reasonable and proper.

286. The registered proprietor of the land, or of a charge or incumbrance, may by an instrument in form 67 in the first schedule hereto, or to the like effect, authorize an application to be made to the registrar for information as to the entries in the register at or prior to the date of such authority. A copy of the authority may be filed in the registry. The registrar shall at any time furnish to any person producing the authority such information as to the state of the register at the date mentioned in the authority as may be reasonably required.

287. Except where otherwise provided, inspection of books and documents shall be in the discretion of the registrar.

288. Every inspection shall be made in the presence of an

officer of the registry, and every copy or note of, or extract from any register or document in the custody of the registrar shall be made by the person inspecting in pencil only. No ink shall be used. 1903, rr.
283-295.

289. Any person authorized to inspect the entries in the register relating to any title, charge, or incumbrance, may apply to the registrar in writing, signed by himself or his solicitor, to make an official search (describing the nature of the search required) against such title, charge, or incumbrance, and to issue a certificate of the result; and the registrar, on receipt of such application, shall make the search and issue the certificate accordingly. The certificate of the result of such search shall be in form 68 in the first schedule hereto.

290. The registered proprietor of any land, charge, or incumbrance, may apply to the registrar by telegraph to search whether any caution, restriction, inhibition or notice has been entered against any such land, charge, or incumbrance since a date to be named; which date must not be earlier than the date of the land certificate or certificate of charge held by the applicant, or, where such certificate has been re-issued, the date on which it was last re-issued.

291. The application shall give the number of the title and the parish or place under which it is registered, and in the case of a charge or incumbrance shall give a sufficient description thereof, and shall be signed by the registered proprietor (or by his solicitor, describing himself as such, and giving the name of the proprietor), and shall give the name and address of the person to whom the answer is to be sent. The fee for the search shall be sent by the same telegram, and the reply must be prepaid.

292. Upon the receipt of such an application the search shall be made forthwith, and the result "yes" or "no" shall be sent by telegram to the person named in that behalf in the application, repeating the number of the title, the parish or place, the date at which the search commences, and, in the case of a charge or incumbrance, the description thereof.

293. When a solicitor or other person obtains an official certificate of the result of a search he shall not be answerable in respect of loss that may arise from any error therein. When the certificate is obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons also shall not be so answerable.

294. An office copy of any entry in the register, or of any document in the registry, shall, upon an application in writing

1903, rr.
283-295.

by any person who is entitled to inspect such entry or document, be issued to him or his solicitor.

295. When any land has been removed from the register, the last registered proprietor of the land or of any charge thereon may, for a period of two years from the date of such removal, inspect the register and have office copies of the entries supplied to him. After two years from the removal no inspection shall be allowed, or office copy be issued, except by order of the registrar, given after satisfying himself that the applicant is interested, and that the application is reasonable.

Escheat.

1875, s.
105.

Saving clause.

105. Nothing in this Act contained shall affect any right of Her Majesty to any escheat or forfeiture.

London Registry.

1875, s.
106.

Part V.

Administration of Law and Miscellaneous.

(1.) Office of land registry.

106. There shall be an office in London to be called the office of land registry, the business of which shall be conducted by a registrar to be appointed by the Lord Chancellor, with such number of officers (namely, assistant registrars, clerks, messengers, and servants,) as the Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury* as to number, may from time to time appoint.

A person shall not be qualified to be appointed registrar unless he is a barrister of not less than ten years' standing and a person shall not be qualified to be appointed an assistant registrar unless he is either a barrister or solicitor or certificated conveyancer of not less than five years' standing.

The registrar, assistant registrars, clerks, messengers, and servants shall receive such salaries or remuneration as the *Commissioners of Her Majesty's Treasury* may from time to time direct.

The salaries of the registrar, assistant registrar, clerks, messengers, and servants, and such incidental expenses of carrying this Act into effect as may be sanctioned by the

Commissioners of Her Majesty's Treasury, shall be paid out of ^{1875, s.} ^{106.} moneys provided by Parliament.

The Lord Chancellor may from time to time make regulations for the office of land registry, and for assigning the duties to the respective officers, and determining the acts of the registrar which may be done by the assistant registrar, and may from time to time revoke and alter any such regulations, and make new regulations. All such regulations for the time being in force shall have effect as if they were enacted in this Act.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

Acting registrar.

1903, r.
342.

342. During a vacancy in the office of registrar, or (subject to any regulations which the registrar may make) in the absence of the registrar, the senior assistant registrar for the time being present at the registry shall be styled the acting registrar, and may perform and exercise all the functions and authorities by the Acts or Rules vested in the registrar.

107. There shall be a seal for the office of land registry.

1875, ss.
107, 108.

108. Subject to the provisions of this Act, the registrar shall conduct the whole business of registering land under this Act; he shall frame and cause to be printed and circulated or otherwise promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act.

Part I.

1903, rr.
2-17, 316-
321, 327-
329, 252,
330, 331,
343.

The register.

2. The register shall consist of three portions, called the property register, the proprietorship register, and the charges register. In the case of corporeal hereditaments, a plan of the land shall be filed in the registry. The title to each registered property shall bear a distinguishing number.

3. The property register shall contain the description of the land comprised in the title, with a reference to the filed plan thereof, and such notes as have to be entered relating to the ownership of the mines and minerals; to exemption from any of the liabilities, rights, and interests mentioned in section 18 of the Act of 1875, as amended by the Act of 1897; to easements, rights to profits à prendre, conditions and covenants for the benefit of the land, and other like matters.

1903, rr.
2-17, 316-
321, 327-
329, 252,
330, 331,
343.

4. When pieces of land are added to or are removed from the property, the addition or removal shall, where it is practicable, be noted in the property register, and marked upon the filed plan.

5. In the case of leasehold land there shall be entered in the property register a reference to the registered lease, and such particulars of the lease, and of the exceptions or reservations therefrom (if any) as the applicant may desire, and the registrar approve: and a reference to the lessor's title, if registered.

6. The proprietorship register shall state the nature of the title, and shall contain the name, address, and description of the proprietor of the land, and cautions, inhibitions, and restrictions affecting his right of disposing thereof.

7. The charges register shall contain, as well incumbrances prior to registration, as also subsequent charges, and other incumbrances (including notices of leases and of estates in dower or by the curtesy), and such notes as have to be entered relating to covenants, conditions, and other rights adversely affecting the land; and shall also contain all such dealings with registered charges and incumbrances as are capable of registration.

8. Charges and other incumbrances may, if the registrar thinks fit, be entered in a separate book, and if so entered shall be referred to in the charges register. Subsequent dealings therewith shall be registered by being entered in the book wherein the charge or incumbrance is registered.

9. In districts where registration of title is compulsory the register shall be bound in volumes, according to parishes; and where land comprised in one title lies in more than one parish, the proprietor may determine under which parish the title shall be registered. An extra parochial place may be treated as a separate parish having its own volume of the register, or may be treated as part of any of the adjoining parishes, as the registrar may in each case deem most convenient.

10. When there are several entries in the register affecting portions of the land comprised in a title or charge, a plan may be made, showing the portions affected by each entry, and such plan may be referred to in the register.

11. Any landowner who desires it may have the register of his title bound in a separate volume, on such terms (if any) as the registrar may think fit.

12. There shall be kept in the registry an index map which shall show the position and extent of every registered property

by means of a tint of colour, together with the number of the title under which it was first registered. A separate index map shall be made of leasehold titles, and of lands affected by the registration of incorporeal hereditaments. 1903, rr.
2-17, 316-
321, 327-
329, 252,
330, 331,
343.

There shall also be kept an index of proprietors' names in alphabetical order, showing the numbers of the titles, charges, or incumbrances of which the several persons appearing in it are proprietors. It shall be kept up to date by cancelling the obsolete names and numbers, as well as by making all necessary additions from day to day.

13. A list shall also be kept of pending applications to enter land in the register, showing the parish or place, the name of the applicant, and the number of the application in each case.

14. The index maps, and the list of pending applications (but no other book, map, plan, or document) shall be open to general public inspection, at any time during office hours. The index of proprietors' names shall be open to the inspection of the registered proprietors only. Provided that if any person shall satisfy the registrar that he is interested generally in the property of any proprietor—for instance, as his trustee in bankruptcy, or his executor or administrator—he may inspect that index also.

15. Where any clerical error or error of a like nature is discovered in the register, or in any plan or document referred to therein, which can be corrected without detriment to any registered interest, the registrar may (if he thinks fit, and after giving any notices, and calling for any evidence or obtaining any assent he may deem proper) cause the necessary correction to be made.

16. Where it is proved to the satisfaction of the registrar that the whole of the land comprised in a title, or too large a part to be properly dealt with under rule 15, has been registered in error, the registrar may enter notice of the fact in the register, and he may either (a) with the consent of the registered proprietor and of all other persons appearing by the register to be interested in the land, or (b) after such inquiry and such notices, if any, as he may consider proper, and upon the production of such evidence as he may deem necessary, annul the registration wholly or to the extent required.

17. The registrar may, at any time, after such inquiry and notices, if any, as he may consider proper, and upon the production of such evidence as is required by these rules or as he may deem necessary, withdraw from the register by cancellation or otherwise any lease, incumbrance, charge, note, notice,

1903, rr.
2-17, 316-
321, 327-
329, 352,
330, 331,
343-
or other entry, which he is satisfied has determined, or ceased, or been discharged, or for any other reason no longer affects or relates to registered land.

1903, rr.
316-321.

Abatement.

316. In case of death or transmission or change of interest pending an application for registration the proceedings shall not abate, but may be continued by any person entitled to apply for registration who desires to adopt them.

Abstracts and documents.

317. All abstracts and copies of documents and all documents for registration delivered at the registry shall be retained there, pending completion of the registration to which they relate; and afterwards such of them as have not under these rules to be retained in the registry shall be dealt with as the registrar shall direct. Abstracts and documents left for reference or otherwise shall be examined and verified by such persons and in such manner as the registrar shall direct.

318. The registrar may require an abstract or concise statement of any deeds and documents delivered at the registry for perusal in the course of any registration proceeding to be furnished and duly verified.

319. All documents (other than maps or plans) to be filed in the registry shall be printed, type-written, lithographed, or written on stout paper, foolscap size, and shall allow a sufficient stitching margin, in order that they may be conveniently bound.

320. Every copy of a document delivered by a solicitor at the registry shall be endorsed with his name and address, and shall be certified by him to be a true copy of the original. Such copy need not be stamped.

321. All documents not required by the Acts or Rules to be retained in the registry may, when no longer required, be returned to the persons who produced the same, or their successors in title, and the registrar may direct the destruction of any documents which such persons decline to accept. The registrar may also direct the destruction of any documents in his possession or custody where they have become altogether superseded by entries in the register, or have ceased to have any effect.

Statutory declarations and evidence on oath.

1903, rr.
327-329.

327. Statutory declarations made for the immediate purpose of being filed, read, or used in the registry are not chargeable with any inland revenue stamp duty. Statutory declarations to be used in the course of registration may be made before the registrar, or any officer of the registry authorized by him in writing, or before any person authorized by law to take statutory declarations. All declarations shall be filed in the office, and office copies thereof shall (if required) be taken for use.

The registrar may, if he think fit, require evidence to be given *vivâ voce* before him on oath.

Neglected applications to be treated as withdrawn.

328. When in any matter pending in the registry no step has been taken for a period of two months, notice may be given to the applicant, or his solicitor, that the matter will be treated as abandoned unless duly prosecuted within a time (not being less than one month), to be fixed by the registrar, and named in the notice; and at the expiration of that time, the matter, if not prosecuted, may be treated as abandoned.

Cancellation of fee stamps.

329. Every officer of the land registry who shall receive any document to or upon which an adhesive fee stamp shall be affixed, shall immediately on receipt thereof deface the stamp thereon.

Entry of value of land on the register.

1903, r.
252.

252. On the first registration of land, and on subsequent changes of proprietorship, the registrar shall, whenever practicable, enter in the register, and on the land certificate, the price paid or value declared. The original amount of every charge shall also where practicable be entered on the register.

Evidence of value may be required.

1903, rr.
330, 331.

330. For the purpose of enabling the registrar to determine the fees payable in any case where the value of the land does not appear on the face of the documents produced, and is required to be known, the registrar may require such evidence

1903, rr.
330, 331.

of value to be furnished as he may deem fit. In ordinary cases a written certificate of value by a solicitor in form 70 in the first schedule hereto may be accepted as sufficient. Such certificate is exempted from stamp duty.

Forms to be supplied without payment.

331. Ordinary printed forms for use in the registry shall be supplied free of charge to applicants for registration.

1903, r.
343.

Holidays.

343. The registry shall be open to the public daily, except on Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Monday in Whitsun week, Christmas Day and the next following working day, and all days duly appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving, and any other days appointed by the Lord Chancellor in that behalf.

1875, ss.
109, 110.

109. The registrar or any officer of the registry office authorized by him in writing may administer an oath or take a voluntary declaration in pursuance of the Acts in that behalf for any of the purposes of this Act, and the registrar may, by summons under the seal of the office, require the attendance of all such persons as he may think fit in relation to the registration of any title; he may also, by a like summons, require any person having the custody of any map, survey, or book made or kept in pursuance of any Act of Parliament to produce such map, survey, or book for his inspection; he may examine upon oath any person appearing before him and administer an oath accordingly; and he may allow to every person summoned by him the reasonable charges of his attendance.

Any charges allowed by the registrar in pursuance of this section shall be deemed to be charges incurred in or about proceedings for registration of land, and may be dealt with accordingly.

110. If any person, after the delivery to him of such summons as aforesaid, or of a copy thereof, wilfully neglects or refuses to attend in pursuance of such summons, or to produce such maps, surveys, books, or other documents as he may be required to produce under the provisions of this Act, or to answer upon oath or otherwise such questions as may be lawfully put to him by the registrar under the powers of this Act, he shall incur a penalty not exceeding twenty pounds, to be

recovered on summary conviction; provided that no person shall be required to attend in obedience to any summons or to produce such documents as aforesaid unless the reasonable charges of his attendance and of the production of such documents be paid or tendered to him. 1875, ss.
109, 110.

Summonses of witnesses, and for production of documents. 1903, rr.
332, 333,
337, 341.

332. When any summons has been issued by the registrar under section 109 of the Act of 1875, as extended by section 8 of the Act of 1897, to be served upon any person not bound to attend or produce documents at his own expense, the declaration verifying the service thereof shall also prove that the reasonable charges of the attendance of the person summoned, and of his production of the documents (if any) required to be produced, have been paid or tendered to him.

333. The registrar shall have the like power with regard to the issue of summonses in respect to any proceeding in the registry as is conferred on him by sections 71 and 109 of the Act of 1875 in relation to the registration of any land or title.

Questions arising on registration.

1903, r.
337.

337. If at any time during any investigation of title, or in any registration or other proceeding in the registry, any question or doubt or dispute arises, notice may, with the consent of the registrar, be given by the applicant to any person interested in such question or doubt or dispute, to the effect that the same will be heard by the registrar at a time to be mentioned in the notice, and that he may attend before the registrar at that time, in person, or by his solicitor or counsel; and on the day appointed the registrar shall proceed to determine the matter.

Discretionary power of registrar.

1903, r.
341.

341. The registrar, if he so think fit, may, in any particular case, extend the time limited, or relax the regulations made by general rules, for any purpose; and may at any time adjourn any proceeding, and make any fresh appointment; and if at any time he is of opinion that the production of any further documents, or evidence, or the giving of any further notices is necessary or desirable, he may refuse to complete or proceed with a registration, or to do any act, or make any entry until such further documents, or evidence, or notices have been

1903, r. 341. supplied or given; and the registrar shall have generally a discretionary power in all mere formal matters.

Rules.

1875, ss.
111-113.

111. Subject to the provisions of this Act, the Lord Chancellor may, with the advice and assistance of the registrar, from time to time make, and when made may rescind, annul, or add to, general rules in respect of all or any of the following matters; that is to say,

- (1.) The mode in which the register is to be made and kept; and
- (2.) The forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings before the registrar or in connexion with registration, and in particular with respect to the reference to a conveyancing counsel of the Court of Chancery of any title to land proposed to be registered with an absolute title; and
- (3.) The custody of any instruments from time to time coming into the hands of the registrar, with power to direct the destruction of any such instruments where they have become altogether superseded by entries in the register, or have ceased to have any effect:
- (4.) The costs to be charged by solicitors or certificated conveyancers in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying this Act into execution, with power to require such costs to be payable by commission, per-centage, or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as may be thought expedient; and
- (5.) The taxation of such costs and the persons by whom such costs are to be paid; and
- (6.) Any matter by this Act directed or authorized to be prescribed; and
- (7.) Any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution:

Any rules made in pursuance of this section shall be

deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed. 1875, ss.
111-113.

Any rules made in pursuance of this section shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

112. The Lord Chancellor may from time to time, with the concurrence of *the Commissioners of the Treasury*, make, and when made revoke, alter, or add to rules with respect to the amount of fees payable under this Act, regard being had to the following matters:

- (1.) In the case of the registration of land or of any transfer of land on the occasion of a sale,—to the value of the land as determined by the amount of purchase money; and
- (2.) In the case of the registration of land, or of any transfer of land not upon a sale,—to the value of the land, to be ascertained in such manner as may be prescribed; and
- (3.) In the case of registration of a charge or of any transfer of a charge,—to the amount of such charge.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

113. *The following rules shall be observed with respect to the fees payable in pursuance of this Act:*

- (1.) *The fees shall, except so far as the Lord Chancellor, with the concurrence of the Commissioners of Her Majesty's Treasury, may from time to time otherwise direct, be taken by stamps; and if not taken by stamps, shall be taken, applied, accounted for, and paid over in such manner as may be directed by the Commissioners of Her Majesty's Treasury with the concurrence of the Lord Chancellor; and*
- (2.) *Such stamps shall be impressed or adhesive, as the Commissioners of Her Majesty's Treasury from time to time direct; and*
- (3.) *The Commissioners of Her Majesty's Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for regulating the use of such stamps, and for insuring the proper cancellation of stamps, and for keeping accounts of such stamps; and*

1875, ss.
III-III3.

(4.) *The Commissioners of Inland Revenue shall keep a separate account of all money received in respect of stamps under this Act, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this Act, the money so received shall, under the direction of the Commissioners of Her Majesty's Treasury, be carried to and form part of the Consolidated Fund:*

(5.) *Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment, with or without hard labour, for a term not exceeding two years.*

Repealed by S. L. Rev. Act, 1883.

1897, s.
22.

Part IV.

Miscellaneous.

22.—(1.) Regulations may be made by the Lord Chancellor, under section one hundred and six of the principal Act, altering or adding to the official styles of the registrar and other officers of the registry, for the purposes of this Act.

(2.) General rules under section one hundred and eleven of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the registrar, a judge of the Chancery Division of the High Court to be chosen by the judges of that division, and three other persons, one to be chosen by the General Council of the Bar, one by the Board of Agriculture, and one by the Council of the Incorporated Law Society.

(3.) Orders under section one hundred and twelve and one hundred and twenty-two of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the same persons, and with the concurrence of the Treasury.

(4.) The fee orders relating and incidental to registration of title shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses (including the annual contribution to the insurance fund) incidental to the working of the principal Act, and this Act, and no more.

(5.) Subject to any alterations that may be made in

accordance with sections one hundred and twelve and one hundred and twenty-two of the principal Act and this section, the fees to be charged in districts where registration of title is compulsory shall, as regards the matters mentioned in the second schedule hereto, be as therein set forth.

(6.) Provision may be made by general rules, under section one hundred and eleven of the principal Act, as amended by this Act, for carrying this Act into effect, and in particular for the following purposes:—

- (a.) For carrying out the provisions of this Act with respect to compulsory registration;
 - (b.) For adapting to the registration of proprietors of leasehold land the provisions of the principal Act, as to absolute and possessory titles, and as to land certificates;
 - (c.) For adapting to sub-mortgages and to incumbrances prior to registration the provisions of the principal Act with regard to charges;
 - (d.) For the conduct of official searches against cautions, inhibitions, and such matters of a like nature as may be prescribed, and for enabling the registered proprietor to apply for such searches by telegraph, and for returning the replies in like manner to him or to such other person as he may direct;
 - (e.) For enabling cautions to be entered against the registration of possessory and qualified titles as qualified or absolute;
 - (f.) For enabling a mortgagee by deposit to give notice to the registrar by registered letter or otherwise of the deposit with him of the land certificate, office copy of the registered lease, or certificate of charge. Provided that the fee for the entry of any such notice shall not exceed one shilling;
 - (g.) For applying to the grant of leases and dealings with leasehold land the provisions of this Act with respect to compulsory registration;
 - (h.) For allowing the insertion, *inserting* in the register, and in land certificates, of the price paid or value declared on first registrations, transfers, and transmissions of land; and
 - (i.) For regulating any such matters as are authorized by this Act to be prescribed.
- (7.) Provided that nothing in the rules under the said section shall extend to allow the inspection of any entry in

1897, s.
22.

the register, except by or under the authority of some person interested in the land or charge to which the entry refers.

(8.) Provision may be made by general orders under section one hundred and eighteen of the principal Act for modifying the provisions of that Act with respect to the formation and constitution of district registries, and for providing the mode in which district registrars are to be remunerated; but nothing in any such order shall affect the provisions as to qualification contained in section one hundred and nineteen of the principal Act.

The word "*inserting*" is redundant.

Applications to the Court.

1875, ss.
114-117.

Description and powers of the Court.

114. For the purposes of this Act, "the court" shall mean the Court of Chancery or the County Court, according as the one or other of such courts may be prescribed by the general rules made for carrying into effect this Act.

The County Court shall, in cases where it has jurisdiction under this Act, have, for all the purposes of such jurisdiction, all the powers of the Court of Chancery.

Any jurisdiction of the Court of Chancery or County Court under this Act may be exercised by any judge of the said court, whether sitting in open court or in chambers.

115. The Lord Chancellor may from time to time assign the duties vested in the Court of Chancery in relation to matters under this Act to any particular judge or judges of that court.

116. Any person aggrieved by any order of a judge of a County Court may, within the prescribed time and in the prescribed manner, appeal to the Court of Chancery.

The court on hearing such appeal may give judgment affirming, reversing, or modifying the order appealed from, and may finally decide thereon, and make such order as to costs in the court below and of the appeal as may be agreeable to justice; and if the court alter or modify the order, such order so altered or modified shall be of the like effect as if it were the order of the County Court. The Court of Chancery may also, in cases where the court thinks it expedient so to do, instead of making a final order, remit the case, with such directions as the court may think fit, to the court below.

117. Any person aggrieved by an order made under this

Act by the Court of Chancery otherwise than on appeal from a County Court, may appeal within the prescribed time, in the same manner and with the same incidents in and with which orders made by the Court of Chancery on cases within the ordinary jurisdiction of such court may be appealed from.

1875, ss.
114-117.

Appeals and applications to the Court.

1903, rr.
296-312.

296. In all mere formal matters the decision of the registrar shall be final, unless the registrar, or the court, gives leave to appeal therefrom.

297. In all other cases, questions arising before the registrar upon any application as to the registration of a title, incumbrance, or charge, or as to any dealing with any registered title, incumbrance, or charge, or any matter entered or noted in or omitted from the register, or as to the amendment or withdrawal from the register of any certificate or other document, or as to any claim for indemnity (whether such questions relate to the construction, validity, or effect of any instrument, or the persons interested, or the nature or extent of their respective interests or powers, or as to order of priority, or the mode in which any entry should be made or dealt with in the register, or otherwise) shall be determined by the registrar, subject to appeal to the court; but the registrar may, if he think fit, instead of deciding the question himself, refer it at once to the court for decision.

298. Subject to the provisions of rules 296 and 297, any person aggrieved by an order or decision of the registrar may appeal to the court.

299. All jurisdiction powers and duties by the Acts or these Rules expressed to be vested in the Court of Chancery, or in the Court, including the hearing of any appeal under section 116 of the Act of 1875, shall until further order be assigned to and vested in and exercised and performed by the senior judge for the time being of the Chancery Division of the High Court of Justice. In his absence, or on his request any other judge of that division—and during vacations any judge of the High Court acting as vacation judge—may act for him.

300. Upon any application to the Court on reference by or appeal from the registrar, a statement shall be prepared and signed by the registrar and forwarded to the Court by him. A copy of such statement shall at the request of any party to the application be delivered to him without charge. Any facts in dispute shall be proved by evidence as the Court shall direct.

1903, rr.
296-312.

301. (a.) Appeals under section 116 of the Act of 1875 shall be by motion.

(b.) Applications requiring the registrar to do or omit to do any particular thing and not intended to raise a question between the applicant and any other person shall be made by motion, notice of which shall be served in the first instance on the registrar only, but the Court may direct notice thereof to be served on any other person who, in the opinion of the Court, ought to have such notice.

(c.) All other applications to the Court shall be by summons, to be heard by the judge in person.

302. Upon application to the Court, on reference by, or on appeal from, the registrar, the summons shall be in form 69 in the first schedule-hereto, with such variations as the circumstances may require: and shall be addressed to all the persons upon whom it is to be served; and they shall be named therein as respondents. If the application is by way of appeal, the summons shall be taken out by the appellant: but if by way of reference, it shall be taken out by such person as the registrar shall direct, who shall be named therein as applicant.

303. The summons shall be issued by the registry duly stamped and sealed. It shall be served, according to the usual practice in the High Court, upon the persons to whom it is addressed, at least seven clear days before the date named in the margin for the hearing thereof. The person served is not required to enter any appearance.

304. Upon any other application authorized to be made to the Court by summons the same form of summons may be adopted, with all necessary modifications: and the question for the decision of the Court may be set forth either in the body of, or in a schedule to, the summons, or may be annexed to it.

305. When any party to an application fails to attend at the time fixed for the hearing thereof, or any adjournment thereof, the Court shall have the same powers in every respect as if Order liv. rules 5 to 7 of the Rules of the Supreme Court were herein repeated: and if the Court does not think it expedient to proceed *ex parte*, it may appoint another day for the hearing of the application.

306. Upon the hearing of any application the judge may allow any amendment, or any adjournment of the hearing, or may direct that any other parties shall be brought before the Court, or may remit the matter to the registrar for his decision; and shall have the same powers in every respect as if the summons had been taken out in an action in the Chancery

Division pending before him, and he may make any order or ^{1903, rr.} give any directions authorized by sections 76 and 77 of the Act ^{296-312.} of 1875.

307. The same fees and charges shall be payable in respect of every application to the Court under the Acts and Rules, and of all proceedings consequent thereon, as would have been payable if the applications and proceedings had been made and taken in an action or matter already pending before the Court : and shall be payable by impressed or adhesive stamps in the same manner as other fees in the registry are now payable.

308. No appeal shall be brought from a decision or order of the registrar, or of the Court, after 21 days from the date of the decision or order, without the leave of the Court, or of the Court of Appeal.

309. No appeal from a decision or order of the registrar, or of the Court, shall affect any dealing for valuable consideration which has been duly registered before a notice in writing of the intention to appeal has been delivered at the registry on the part of the appellant. Such notice shall be entered in the register.

310. Service on the registrar of any order or office copy of any order of any Court shall be made by delivering the same at the registry. When the order directs rectification of the register to be made, or any other act to be done, an application therefor shall be delivered at the same time, and the matter shall be proceeded with as the registrar shall direct. Provided that no such rectification, or act, shall be completed until the expiration of four clear days from the day on which the order is made.

311. Subject to the provisions as to costs contained in the Acts, the costs of and incident to all applications to the Court upon reference or appeal or otherwise shall be in the discretion of the Court.

312. Every summons when disposed of shall be filed in the registry with the duplicate order made thereon. The duplicate order made on a motion shall also be filed in the registry.

District Registries, Temporary Provisions, Local Registries.

As to district registries.

1875, ss.
118 128.

118. The Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury*, shall have power by

1875. ss.
118-128.

general orders from time to time to do all or any of the following things:—

- (1.) To create district registries for the purposes of registration of land within the defined districts respectively, and to alter any districts which shall have been so created; and
- (2.) To direct, by notice to be published in the *London Gazette*, when (upon or after the commencement of this Act) registration of land is to commence in any district, and the place at which lands are to be registered; and
- (3.) To commence registration of land in any one or more district or districts, pursuant to any such notice; and
- (4.) To appoint district registrars, assistant district registrars, clerks, messengers, and servants to perform the business of registration in any district which may from time to time be created a district for registration under this Act.

The Lord Chancellor may, with the like concurrence, from time to time make, rescind, alter, or add to any order made in pursuance of this section.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

119. A person shall not be qualified to be appointed district registrar under this Act unless he is a barrister or solicitor or certificated conveyancer of not less than ten years' standing, and a person shall not be qualified to be appointed an assistant district registrar under this Act unless he is either a barrister or solicitor or certificated conveyancer of not less than five years' standing. A district registrar or assistant district registrar may, with the assent of the Lord Chancellor, follow another calling.

120. A seal shall be prepared for each district registry office, and any instrument purporting to be sealed with such seal shall be admissible in evidence, and if a copy, the same shall be admissible in like manner as the original.

121. Subject to general rules each district registrar and assistant district registrar shall, as regards the land within his jurisdiction, have the same powers and indemnity as are herein given to the registrar and assistant registrar in the office of land registry, and there shall be the same appeal as in the case of the registrar; and any orders made by a district registrar or assistant district registrar may in like manner be made orders

of and be enforced by the Court: Provided always, that the Lord Chancellor may, by general rules, make provision for the duties of district registrar, as regards all or any of the proceedings preliminary to first registration, or as regards any matters which the district registrar has to determine, or any other matters, being performed by the registrar or assistant registrar in the office of land registry, and for any district registrar, in any cases obtaining directions from or acting with the sanction of such registrar or assistant registrar: and any such orders may from time to time be rescinded, altered, or annulled by the Lord Chancellor, and all orders made in pursuance of this section shall be of the same force as if inserted in this Act, and shall be judicially noticed.

122. The general orders, rules, forms, directions, and fees for the time being applying to and payable in the office of land registry shall also apply to and be payable in all the district registries, subject to any alteration or addition for the time being made for any district by the Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury*, as to fees.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

(2.) Temporary provisions.

123. The registrar, assistant registrar, examiners of title, clerks, messengers, and servants *at the time of the commencement of this Act* attached to the office of land registry, shall *from and after the commencement of this Act* be attached to the office of land registry as constituted by this Act.

The registrar and other officers and persons so attached shall have the same relative rank, such rank being in the case of the assistant registrar above the rank of any other assistant registrar or any district registrar who may be appointed in pursuance of this Act, and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions or superannuation allowances, be entitled to the same pensions or superannuation allowances as if this Act had not passed; and their service under this Act shall, as regards their claim to pension or superannuation allowance, be deemed a continuance of their former service, but in the event of any such officer being appointed to a new office in pursuance of this Act, service under the Land Registry Act, 1862, shall be deemed to be service under this Act for the purposes of

1875, ss.
118-128.

entitling such last-mentioned officer to salary, superannuation, compensation, gratuity, or other allowances under the Superannuation Acts. The messengers and servants of the office of land registry shall, during the tenure of office by the existing registrar, be appointed and removed by him.

The Lord Chancellor may, by rules, distribute the business to be performed in the office of land registry as constituted under this Act amongst the several officers attached thereto by this section, in such manner as he may think just; and such officers shall perform such duties in relation to such business as may be directed by such rules, with this qualification, that the duties required to be performed by any officer shall be the same as or duties analogous to those which he performed previously to the passing of this Act.

The officers so attached as aforesaid, and their successors in office, shall for all the purposes of the Land Registry Act, 1862, so far as it will remain in operation after the passing of this Act, and for all the purposes of the Improvement of Land Act, 1864, and of the Mortgage Debenture Act, 1865, be deemed to be officers acting under the Land Registry Act, 1862, and having to discharge the duties belonging to officers acting under such Act.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

124. All books, documents, and papers in the possession of the office of land registry as constituted before the passing of this Act, or of any person attached to or performing any ministerial duty in aid of such office, shall be dealt with in such manner as the Lord Chancellor may by order direct, and any person failing to comply with any order of the Lord Chancellor made for the purpose of giving effect to this section, shall be punished in the same manner as if he had been guilty of a contempt of the Court of Chancery.

125. *From and after the commencement of this Act*, application for the registration of an estate under the Land Registry Act of 1862 shall not be entertained.

Words in italics repealed by S. L. Rev. (No. 2) Act, 1893.

126. *From and after the commencement of this Act*, the Lord Chancellor may, by order, provide for the registration under this Act, without cost to the parties interested, of all titles registered under the Land Registry Act, 1862, and care shall be taken in such order to protect any rights acquired in pursuance of registry under such last-mentioned Act, and any order

so made by the Lord Chancellor shall have the same effect as ^{1875, ss. 118-128.} if it were enacted in this Act; *nevertheless it shall not be obligatory on any person interested in an estate registered under the said Land Registry Act, 1862, to cause such estate to be registered under this Act, and until such estate is registered under this Act, the Act of 1862 shall apply thereto in the same manner as if this Act had not passed.*

"From and after," etc., repealed by S. L. Rev. (No. 2) Act, 1893. Other words in italics repealed by 1897, sched. 1.

Local registries.

127. Any land situate within the jurisdiction of any of the following local registries; that is to say,

- (1.) The registry for the county of Middlesex; or
- (2.) The registry for the West Riding of Yorkshire; or
- (3.) The registry for the North Riding of Yorkshire; or
- (4.) The registry for the East Riding of Yorkshire and the

town and county of the town of Kingston-upon-Hull; shall, if registered under this Act, from and after the date of the registration thereof, be exempt from such jurisdiction; and no document relating to any such registered land executed and no testamentary instrument relating to any such registered land coming into operation subsequently to such date as last aforesaid shall be required to be registered in any of the said local registries.

[The section shall not apply to estates and interests excepted from the effect of registration under a possessory or qualified title, or to an unregistered reversion on a registered leasehold title, or to dealings with incumbrances created prior to the registration of the land.]

Paragraph in brackets added by 1897, sched. 1.

128. If any person who is at the commencement of this Act a registrar of or an officer in any of the said local registries, suffers any loss of fees or emoluments by reason of the business in such registry being diminished in consequence of this Act, he may petition the Commissioners of Her Majesty's Treasury for compensation, and the Commissioners of Her Majesty's Treasury shall inquire whether any, and if any, what compensation ought to be made to the petitioner, regard being had to the conditions on which his appointment was made, the nature of his office, the duration of his service, the character of his fees or emoluments, and all the circumstances of the case. The petitioner shall render to the Commissioners of

1875, ss.
118-128.

Her Majesty's Treasury such account of the fees and emoluments received by him during any period not exceeding five years before the passing of this Act, and during such period before the date of his petition, and give such information as the Commissioners of Her Majesty's Treasury may require for the purpose of enabling them to ascertain whether the petitioner has suffered the loss alleged by him, and whether any, and if any, what compensation ought to be made to him.

If the Commissioners of Her Majesty's Treasury think that the claim of the petitioner to compensation is established, they may award to him, out of moneys to be provided by Parliament, such compensation, by annuity or otherwise, as under the circumstances of the case they think just and reasonable.

1897, s.
23.

23.—(1.) At any time after the passing of this Act, and subject to the provisions of section twenty of this Act, the Lord Chancellor may enter into an agreement with the county council of any of the three ridings of Yorkshire for the transfer of the business of the local deed registry established in that riding to the office of land registry.

(2.) The agreement shall be drawn up in accordance with the principles of sections one, three, and four of the Land Registry (Middlesex Deeds) Act, 1891, which provided for the transfer of the Middlesex registry of deeds to the land registry, and shall, after approval by the Treasury, take effect accordingly.

(3.) The whole of the property, assets, and liabilities of the county council, in relation to the local registry, shall be included in the transfer, and shall be taken over by the State at a price to be specified in or ascertained under the terms of the agreement, but no sum shall be payable for compensation in respect of any future loss of fees consequent upon such transfer.

(4.) Unless and until an agreement as aforesaid is concluded the county council may from time to time, at intervals of five years, in the event of their suffering loss, owing to the business of the local registry being diminished by reason of the principal Act and this Act, apply to the Treasury for compensation, and the Treasury shall award such compensation accordingly.

(5.) The compensation shall be made by the payment of a capital sum to the county fund to be determined in case of dispute by arbitration in the usual way on the basis of the receipts and expenditure in respect of the local registry during

the three years previous to the claim being made, and that the county fund shall not be placed in a worse financial position by the operation of the Act. ^{1897, s. 23}

(6.) All payments under this section shall be made out of moneys to be provided by Parliament.

Repeal.

^{1875, s. 129.}

129. The seventh section of the Vendor and Purchaser Act, 1874, is hereby repealed, as from the date at which it came into operation, except as to anything duly done thereunder before the commencement of this Act.

Repealed by S. L. Rev. Act, 1883.

Registry Fees.

The Second Schedule.

^{1897, sched. 2.}

The following fees shall be paid in districts where registration of title is compulsory, and shall include all necessary surveying, mapping, and scrivenery, and the preparation, issue, endorsement, or deposit, as the case may be, of a land certificate, office copy, registered lease, or certificate of charge; discharges of incumbrances, the registration of any necessary cautions, inhibitions or restrictions, the filing of auxiliary documents (if any), and all other necessary costs of and incidental to the completion of each registration or transaction, whether under one or under several titles.

For possessory registration, and for transfers, charges, and transfers of charges for valuable consideration :—

Value.	Fees.
Not exceeding £1000	1s. 6d. for every £25 or part of £25.
Exceeding £1000 and not exceeding £3000	£3 for the first £1000, and 1s. for every £25 or part of £25 over £1000.
Exceeding £3000 and not exceeding £10,000	£7 for the first £3000, and 1s. for every £50 or part of £50 over £3000.
Exceeding £10,000	£14 for the first £10,000, and 1s. for every £100 or part of £100, up to a maximum of £25 for £32,000.

For transmissions and transfers not for value, notices of leases, and rectification of the register, and land :—

1897,
sched. 2.

One quarter of the above fees, according to the capital value of the interest dealt with, with a minimum of 1s. and a maximum of £5.

No fees to be charged for inspection of the register.

This schedule is practically superseded by the Fee Order, 1903. The words "*and land*" are insensible.

1903, Fee
Order.

THE LAND TRANSFER FEE ORDER, 1903, DATED DECEMBER 18, 1903, MADE IN PURSUANCE OF SECTION 112 OF THE LAND TRANSFER ACT, 1875, AND OF SECTION 22 OF THE LAND TRANSFER ACT, 1897.

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, with the consent of the Treasury and with the advice and assistance of the Honourable Sir Arthur Kekewich, a Judge of the Chancery Division of the High Court of Justice, Charles Fortescue Brickdale, Esq., Registrar of the Land Registry, Sir Howard Warburton Elphinstone, Bart., Barrister-at-Law, chosen by the General Council of the Bar, James William Clark, Esq., Barrister-at-Law, chosen by the Board of Agriculture, and William Melmoth Walters, Esq., Solicitor, chosen by the Council of the Incorporated Law Society, by virtue and in pursuance of the Land Transfer Acts, 1875 and 1897, and of all other powers and authorities enabling in that behalf, do make the following General Rules for the purpose of carrying the said Acts into execution.

Dated this 18th day of December, 1903.

Halsbury, C.

Subject to the Rules hereinafter contained, the following fees shall be charged for the several matters hereunder specified.

(A.) Entry of first proprietorship of land with a possessory title, except as in paragraph (C); registration of charges, and transfers of land, (except as in paragraph (C), and not being by way of partition or exchange), made for valuable consideration other than marriage; and removal of land from the register:—

Value of land or amount of charge.	Fee.	1903, Fee Order.
Not exceeding £1000	1s. 6d. for every £25 or part of £25.	
Exceeding £1000 and not exceeding £3000	£3 for the first £1000, and 1s. for every £25, or part of £25, over £1000.	
Exceeding £3000 and not exceeding £10,000	£7 for the first £3000, and 1s. for every £50, or part of £50, over £3000.	
Exceeding £10,000	£14 for the first £10,000, and 1s. for every £100 or part of £100, over £10,000, up to a maximum of £25 for £32,000.	

(B.) Registration of transmissions, and of transfers not falling within paragraphs (A) or (C), and of charges by way of additional or substituted security; rectification of the register under the 95th section of the Act of 1875; and entries and corrections under rules 151, 154 to 156, and 174:—1s. per £100, or part of £100, of the capital value of the interest dealt with; with a maximum of £2.

(C.) Entry of first proprietorship of leasehold land, where the original lessee or his personal representative is the applicant, with possessory title or good leasehold title; entry of first proprietorship of freehold land with a possessory title on the occasion of a grant, wholly or partly in consideration of a rent; and registration of the transferee on a transfer of freehold land on a like occasion:—

(a.) In respect of the average rent, 2s. for every £10, or part of £10, a year.

(b.) In respect of the money payment or premium (if any), the same fee on its amount as is prescribed for a transfer under paragraph (A).

Provided that no greater fee than £10 be payable in any case.

(D.) Entry of a notice, under section 50 of the Land Transfer Act, 1875, of a lease or sub-lease by way of security for money actually advanced or to be advanced; the same fee as that for registration of a charge for the amount secured: except where a charge is also delivered at the same time in respect of the same advance, in which case the fee for entry of such notice shall be 1s. per £100, or part of £100, of the amount secured, with a maximum of ten shillings.

(E.) Entry of first proprietorship of land with an absolute title, good leasehold title, or qualified title, except as provided in paragraph (C):—

1903, Fee
Order.

Three times the fee prescribed for registration of a possessory title, with a minimum fee of £3.

(F.) Registration of proprietorship of an incumbrance prior to registration, except where registered on the entry of first proprietorship of land with an absolute title, good leasehold title, or qualified title; and of a transfer or transmission thereof:—

The same fee as for registration of a charge, or of a transfer or transmission thereof respectively.

(G.) A land certificate or certificate of charge, except where required by the Acts or Rules to be issued free of charge:—

Where the value of land or charge

	£	s.	d.
does not exceed £1000	0	10	0
exceeds £1000	1	0	0

and in either case such further fee as the registrar shall authorize for copies of plans.

(H.) Altering a land certificate or certificate of charge to correspond with the register, except where such alteration is required by the Acts or Rules to be made free of charge, or is made at the same time as some entry in the register:—

Where the value of the land or charge

	£	s.	d.
does not exceed £1000	0	5	0
exceeds £1000	0	10	0

and in either case such further fee as the registrar shall authorize for altering or preparing copies of plans.

(I.)	£	s.	d.
(1.) Registering an inhibition	1	0	0
(2.) Alteration or withdrawal of an inhibition	0	10	0
(3.) Registering a caution, restriction, or priority notice	0	10	0
(4.) Alteration or withdrawal of a caution, or restriction	0	5	0
(5.) Annexing conditions to land	0	5	0
(6.) Discharging or altering conditions	0	5	0
(7.) Entering notice of an estate in dower or by the curtesy	0	5	0
(8.) Entering a note or notice under the 18th section of the Act of 1875	0	5	0
(9.) An entry negating or altering implied covenants, powers, priorities, etc.	0	5	0
(10.) Filing a supplementary statement of in- cumbrances	0	5	0

REGISTRY FEES.

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	£	s.	d.	1903, Fee Order.
(11.) Entering notice of a lease or sub-lease (not being a lease or sub-lease by way of security for money)	0	5	0	
(12.) Any entry or cancellation on the register for which the registrar considers a fee should be chargeable and for which no other fee is provided	0	5	0	
(13.) Entering an additional address for service	0	2	6	
(14.) Entering notice of deposit or intended deposit of a certificate	0	1	0	
(J.)				
(1.) Preparing or settling a statement for the Court	0	10	0	
(2.) Examination of a married woman by an officer of the Registry	0	10	0	
(3.) Comparing abstracts with deeds by officers of the registry—per hour	0	10	0	
(4.) Certificate of result of official search :—				
(a) of the register—per title	0	5	0	
(b) of the index of proprietors' names—per name	0	5	0	
(c) of the index map	0	5	0	
and if the land in respect of which the search is made exceeds an acre	Such further fee, according to the time and labour employed, as the registrar shall authorize.			
(5.) Furnishing information under rule 286	0	5	0	
(6.) A summons	0	5	0	
(7.) Inspection of any document not referred to on the register	0	5	0	
(8.) Taking an affidavit or declaration	0	1	6	
(9.) Each exhibit thereto	0	1	0	
(10.) Office copies—per folio	0	0	3	
(11.) Copies of plans	Such charges, according to time and labour employed, as the registrar shall authorize.			

RULES.

1. All fees, the amount of which is immediately ascertainable, shall be paid on the delivery of the application.

1903, Fee
Order.

2. Where the amount of a fee is not immediately ascertainable, or where expenses for advertisements or otherwise will be incurred by the registry, such deposit on account shall be made as the registrar shall require.

3. All fees shall be paid in Land Registry stamps, impressed or adhesive, as laid down in the order in that behalf made under the Public Offices Fees Act, 1879. Land Registry stamps shall be purchasable in the registry, and may be paid for by bankers' draft or by postal or post-office order or by cheque drawn to the order of The Land Registry or the registrar or assistant registrar, or in Bank of England notes or cash. Provided that when the fees are paid by cheque the registration shall not be completed until due time has been allowed for the cheque to be cleared, and that if the cheque is not honoured, the application for registration shall be cancelled and the document tendered for registration returned to the applicant. Remittances by post not exceeding 1s. may be made in postage stamps.

4. The above fees include, in the matters to which they relate, all necessary stationery and mapping done in the registry; the preparation, issue, endorsement, and deposit of certificates, wherever such issue, endorsement, or deposit is obligatory; discharges of incumbrances; the filing of auxiliary documents (if any); and all other necessary costs of and incidental to the completion of each registration or transaction. They also include, in districts where registration of title is compulsory, any surveying that may be necessary to enable the land to be identified on the ordnance map.

5. Where a first registration takes place on the enfranchisement of a copyhold, or on the purchase of a leasehold by the reversioner, or of a reversion by the leaseholder, or where a mortgagee purchases the equity of redemption, or on any other like occasion, the fee may, if the registrar shall think fit, be calculated on the value of the interest last acquired, and not upon the value of the applicants' combined interests in the land. In such case no entry of value need be made in the register.

6. Where a disposition is delivered for registration on the day on which an application for the first registration of the land is delivered, no fee shall be payable in respect thereof. If it is delivered subsequently, but within 7 days after the application to register the land is delivered, the fee shall be calculated under paragraph (B).

7. On an application for registration with an absolute title

of land in a district where registration is compulsory on sale, the land being already registered or in course of registration with a possessory title, and the applicant being a purchaser on sale :—

(a.) A portion of the fees prescribed by paragraph (E) shall, at the request of the applicant, and unless the registrar in his discretion determines the contrary, be deferred as hereinafter provided.

(b.) The following sums shall in any event be paid on the delivery of the application, namely :—

Where the value of the land does

not exceed £1000 £2

Where the value exceeds £1000 £2 for the first £1000, and £1 for every £1000 or part of £1000 up to a maximum of £33 for over £31,000.

Provided that where the fee payable under this paragraph becomes chargeable within 14 days after the payment of any other fee (except a fee for first registration with possessory title) the lesser of the two fees shall be allowed for or remitted as the case may be.

(c.) The remainder of the fee shall be noted on the register as deferred, and so long as any part thereof is unpaid, the fees for registration of transfers for value and charges shall be increased by one-half—the amount of the increase in each case being applied in reduction of the deferred fee.

Provided that where the value of the land does not exceed £1000, and a Building Society, Friendly Society, or Industrial and Provident Society has, before the title is made absolute, advanced not less than half the value of the land on the security of a registered charge, the deferred fee shall be remitted.

(d.) The registered proprietor may, at any time, if he wishes, pay off wholly, or in part, the amount of the deferred fee for the time being remaining unpaid.

1903, Fee
Order.

- (e.) The fees of conveyancing counsel and any costs or expenses incurred by the registry on the application shall be borne by the registry.
- (f.) Where an application for registration with absolute title is wholly refused, the following sums shall be retained by the registry, but the remainder of the fees paid shall be returned to the applicant :—

Value of the land.					Sums to be retained.		
					£	s.	d.
Not exceeding £1000	...	...	...	...	0	5	0
Exceeding £1000 and not exceeding £10,000	...			...	0	10	0
Exceeding £10,000	...	...	...	...	1	0	0

- (g.) No fee shall be charged in respect of any application delivered while the application for absolute title is pending.

8. Where an application for first registration with absolute title, to which rule 7 does not apply, is altogether refused, or where an application for registration with absolute title is completed with a qualified or good leasehold title, such abatement (if any) in the fee may be made as the registrar may deem reasonable in the circumstances of the case.

9. The fees payable in respect of any matter involving an inquiry into title are, except where herein otherwise provided, exclusive of the fees of counsel and of any costs or expenses incurred by the registry in regard to the matter.

10. Where land, already registered with a possessory title, is to be registered with a qualified good leasehold or absolute title; or where land, already registered with a qualified or good leasehold title, is to be registered with an absolute title, the registrar may make such abatement (if any) in the fee as he shall deem reasonable.

11. The fee for an entry (except the entry of a notice of deposit or intended deposit) in, or withdrawal from, the register affecting several titles whereof the same person is registered as proprietor shall be the same as for an application respecting one title only. In other cases an extra fee of 2s. 6d. shall be charged for every title affected after the first.

12. Where a transfer for value and a charge by the transferee are registered together only half the usual fee shall be paid in respect of the charge.

13. The fee for first registration of leasehold land shall

include the entry of a notice of the lease against the lessor's title, if registered. ^{1903, Fee Order.}

14. Where a transfer of freehold land in consideration of a rent, or a transfer by which mines and minerals are dealt with separately, is registered, the fee shall not include the registration of the proprietor of the rent, or of the severed land or mines and minerals respectively, as the case may be, for which a separate fee shall be payable as on a transfer of land.

15. No fee shall be payable for any entry of, or in respect of a caution, inhibition, restriction, condition, note, or notice of any kind by the Acts or Rules made necessary on (a) the first registration of land, or (b) any registration for which an *ad valorem* fee is payable.

16. The amount of an average rent for the purposes of this order shall be ascertained in the same manner as for the purposes of Inland Revenue Stamp Duty.

17. Where an instrument or application affecting two or more titles or charges is registered as to some or one only of the titles or charges affected thereby, the fee payable shall be the same as that which would have been payable if it had been registered as to all the titles or charges affected by it. If the instrument or application is afterwards registered as to any other titles or charges, a further fee of 2s. 6d. shall be paid for every title or charge so affected.

18. Where a charge or incumbrance is also secured on unregistered land or other property as well as registered land, the amount of the charge shall for the purpose of this order be reduced to the sum which bears the same proportion to the whole sum secured that the value of the registered land bears to the value of the whole security.

19. The fee on a charge by way of additional or substituted security shall not exceed that upon a charge for a sum equal to the value of the land after deducting the amount secured on it by registered charges at the date of the registration of the additional or substituted charge.

20. The word "land" includes both freehold and leasehold land, and every hereditament the title to which may be registered under the Land Transfer Acts.

21. Where boundaries are to be noted on the register as "accurately defined," such additional charges may be made to cover the cost of the necessary inquiries, mapping, surveying, and notices as the registrar shall in each case deem reasonable.

22. Where land is transferred for valuable consideration other than marriage, subject to a registered incumbrance or

1903, Fee
Order. charge, the fee payable shall be calculated on the amount of the purchase-money, or, where the consideration given is not money, on the value of the equity of redemption.

23. Where land subject to a registered charge or incumbrance is transferred discharged from the charge or incumbrance, and a new charge in favour of the proprietor of the old charge or incumbrance is delivered on the same day as the transfer, the fee payable on the registration of the transfer shall be calculated on the consideration expressed to be paid in the transfer after deducting the amount of the new charge or charges.

24. Where, on the cessation of a charge, a new charge is delivered in favour of the proprietor of the former charge, the fee payable on the new charge, in so far as its amount does not exceed the former charge, shall be calculated at the rate stated in paragraph (B).

25. When two or more rules allowing abatement of fees are applicable to the same case, their effect shall not be cumulative, but the applicant may elect which one of them shall be applied.

26. This Order may be cited as The Land Transfer Fee Order, 1903, and shall come into operation on the first day of January, 1904.

We concur in the above Order.

*Balcarras,
Ailwyn E. Fellowes.*

Treasury Chambers,
19 December, 1903.

Forms.

The First Schedule.

1903,
sched. 1,
f. 1.

FORM 1.—*Application for Registration with a Possessory Title.* (Rule 18.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

I, A.B., of etc., hereby apply to be registered as proprietor with possessory title of the land in the parish of shown and edged with red on the accompanying plan (or comprised in the accompanying deed, or any other particulars sufficient to enable the land to be fully identified on the Ordnance map) the value of which, with all buildings and timber thereon, does not, to the best of my belief, exceed £ .

Where it is desired that a particular verbal description be entered in the 1903, register, add I also desire the following verbal description to be entered on sched. 1, the register:— ff. 2-4.

(Fill in the proposed verbal description.)

To be signed by the applicant or (except where a nominee is to be registered) by his solicitor.

FORM 2.—Statutory Declaration by an Applicant for Registration with a Possessory Title. (Rule 18.)

(Heading as in Form 1.)

I, A.B., of etc., solemnly and sincerely declare as follows:—

That I am in possession, [or receipt of the rents and profits] of the land shown and edged with red on the plan [and—if it is desired that a particular verbal description be entered on the register—described in the verbal description], now produced and shown to me marked [and] and that I am entitled thereto in fee simple for my own benefit (or otherwise as the case may be), and that the value of the land, with all buildings and timber thereon does not, to the best of my belief, exceed £

And I make, etc.

Note.—If sufficient particulars to enable the land to be fully identified on the Ordnance map can be furnished without a plan, no plan need be exhibited, and the declaration can be altered accordingly.

If the declaration is made by the solicitor, the form must be altered accordingly, and the deponent must be described as the solicitor of the applicant.

FORM 3.—Application for Registration with an Absolute Title. (Rule 30.)

(Heading as in Form 1.)

I, A.B., of etc., hereby apply to be registered as proprietor with absolute title of the land in the county of and parish of known as consisting of (fill in short particulars of the land sufficient to identify it) the value of which, with all buildings and timber thereon, does not, to the best of my belief, exceed £

To be signed by the applicant or (except when a nominee is to be registered) by his solicitor.

FORM 4.—Form of Advertisement in the "London Gazette" of an application for an Absolute Title. (Rule 39.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

NOTICE.

The following applications have been made for registration with Absolute Title:—

1903,
sched. 1,
f. 5

No. of Application.	The Land.				The Applicant.		
	County.	Parish or Place.	Name and Short Description.	Freehold or Leasehold.	Name.	Address.	Description.

Plans of the several properties comprised in the application can be seen at the Land Registry, 34, Lincoln's Inn Fields. Any person may by notice in writing, signed by himself or his solicitor, and delivered at the registry before the expiration of two months from the appearance of this advertisement, object to the registration. The notice must state concisely the grounds of the objection, and give the address in the United Kingdom of the person delivering the notice, and, if it is delivered by a solicitor, must give the name and address of the person on whose behalf it is given.

FORM 5.—Statutory Declaration on completion of an Absolute or Qualified Title. (Rule 47.)

(Heading as in Form 1.)

Application, No.

We, A.B., of etc., and C.D., of etc., solicitor, severally solemnly and sincerely declare, to the best of our respective knowledge, information, and belief, as follows:—

1. That all deeds, writings, and instruments of title, and all leases, charges and incumbrances affecting the title to the land which is the subject of the above-mentioned application, and all facts material to such title have been disclosed in the course of the investigation of the said title made by the registrar.

2. That the map marked "A" now produced to us comprises, within the part edged with red, the whole of such land, and no more than such land.

3. That the actual possession, or receipt of the rents and profits, of such land is in accordance with the title of the applicant as deduced to the registrar, and that the value of the land with all buildings and timber thereon [or of the leasehold interest] does not exceed £ .

4. That the said applicant is not a bankrupt, nor has any receiving order been made against him.

5. That there is no *lis pendens*, land charge, or other similar incumbrance, registered or unregistered, in existence, affecting the said land.

6. That the means of our respective knowledge, information, and belief are as follows (that is to say):—[*fill in means of knowledge, etc.*].

And we severally make, etc.

Note.—If the applicant has no solicitor the declaration may be altered accordingly.

FORM 6.—*Restriction where Tenant for Life is registered as Proprietor (a short form).* (Rules 81 and 129.) 1903,
sched. 1,
ff. 6-12.

Except under an order of the registrar, no transfer is to be registered unless made on sale, the purchase moneys being paid to A.B., of etc., and C.D., of etc., (*the trustees of the settlement*), or into Court.

No charge is to be registered except under an order of the registrar.

FORM 7.—*The same (a full form).* (Rules 81 and 129.)

Except under an order of the registrar, no transfer of the land is to be registered unless made on sale or exchange, the purchase moneys on sale being paid to A.B., of etc., and C.D., of etc. (*the trustees of the settlement*), or into Court, and the transfer on exchange being made to the said E.F., of etc. (*the tenant for life*).

No transfer of the mansion house and land shown and edged with red on the filed plan, No. , is to be registered without the consent of the said A.B. and C.D. or an order of the Court.

Except under an order of the registrar, no charge is to be registered unless expressed to be for one of the purposes for which a tenant for life is authorized by law to raise money on mortgage of the settled land, the money being paid to the said A.B. and C.D.

FORM 8.—*Where the Trustees of the Settlement are entered as Proprietors* (Rule 81.)

Except under an order of the Registrar, no transfer is to be registered without the consent of A.B., of etc. (*tenant for life*), or (*where there are several tenants for life and section 6 of the Settled Land Act, 1884, applies*) C.D., of etc., or E.F., of etc.

No charge is to be registered except under an order of the Registrar.

Note.—This form may be amplified, according to circumstances, similarly to Form 7.

FORM 9.—*Addition to the above restrictions.* (Rule 81.)

Where there are limited powers of charging, insert at the beginning of the restriction against Charging, "If and when the land has been charged to the extent of £ no further charge is to be registered etc.," as in Form 6 or 7.

FORM 10.—*Restriction where Land is settled subject to such uses as Two Persons, entered as Proprietors, shall jointly appoint.* (Rule 81.)

After the death of either of the proprietors no transfer or charge is to be registered except under an order of the registrar.

FORM 11.—*Restriction where there are no Trustees of the Settlement and Tenant for Life is registered as Proprietor.* (Rule 81.)

No transfer or charge is to be registered except under an order of the registrar.

FORM 12.—*Additional restriction where Tenant for Life is registered as Proprietor and has incumbered his Beneficial Interest without reserving his right to exercise his Statutory Powers.* (Rule 81.)

Except under an order of the registrar no transfer or charge is to be registered without the consent of A.B., of etc. (*the mortgagee of the life interest*).

1903,
sched. 1,
ff. 13-16.

FORM 13.—*Restriction on Charity Land. (Rules 83 and 150.)*

No disposition is to be registered without the consent of The Charity Commissioners [The Board of Education] or an order of the registrar.

FORM 14.—*Caution (under the 60th section of the Act of 1875) against entry of Land on the Register. (Rule 88.)*

(Heading as in Form 1.)

(*Date.*) A.B. [*the cautioner*] of etc., is entitled to notice of any application that may be made for the registration of the freehold land (*or* leasehold land held under a lease dated etc., and made between A.B., of etc., of the one part, and C.D., of the other part, for the term of years from (*date*) *or otherwise as the case may be*) shown and edged with red on the plan attached hereto.

(To be signed by the cautioner or his solicitor.)

Note.—The statutory declaration in support (in the next form) must set forth the interest in respect of which the cautioner claims to be entitled to object to any disposition of the land being made without his consent.

The form can be adapted to the case of a manor or an advowson or other incorporeal hereditament.

If the cautioner's address is not within the United Kingdom, an address for service within it must also be given.

FORM 15.—*Statutory Declaration in support of a Caution. (Rules 90 and 226.)*

(Heading as in Form 1.)

I, A.B., of etc., solemnly and sincerely declare that I am interested in the land (*or* charge) referred to in the caution now produced and shown to me marked A [*here state the nature of the declarant's interest* "as beneficial owner in fee simple," "beneficially entitled to the lease referred to therein," "tenant for life within the meaning of the Settled Land Acts," "purchaser under a contract for sale, dated, etc.," "plaintiff in an action in the Chancery Division of the High Court of Justice, B. v. C., 1897, B 145," "equitable mortgagee under a memorandum of charge dated , under the hand of ,"*or as the case may be*].

And I make, etc.

(To be declared by the cautioner, or, with the necessary alterations, by his solicitor.)

FORM 16.—*Notice (under the 60th and 62nd sections of the Act of 1875) of an application to register Land. (Rule 91.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District _____

Parish _____

No. of Application _____

Notice.—C.D., of etc., has applied to be registered (*or* to have registered in his stead E.F., of etc.) as proprietor of the land in the parish (*or extra parochial place*) of in the county of affected by the caution dated the (*date*), lodged by you in the Land Registry (at), and if you intend to appear and oppose such registration you are to enter an appearance for the purpose by lodging an objection to the registration in

accordance with Rule 41 at the registry before the expiration of 14 days 1903, from the date of the service of this notice. Unless you so appear, the registration will be proceeded with in your absence. *Sched. 1, ff. 17-20.*

Dated the _____ of _____, 19 .

FORM 17.—*Application to withdraw a Caution against entry of Land on the Register. (Rule 92.)*

(Heading as in Form 1.)

I, A.B., of etc., (*the cautioner*) hereby apply to withdraw the caution lodged on the (*date*) (so far as it relates to the land shown and edged with red on the plan annexed hereto).

(To be signed by the applicant or his solicitor.)

FORM 18.—*Priority Notice (under Rule 95) for entry of Land on the Register.*

(Heading as in Form 16.)

To the Registrar.

Take notice that I, A.B., of etc., desire to reserve priority for an application for registration of myself as first proprietor of the freehold [leasehold] land shown and edged with red on the plan attached hereto, which I have contracted to purchase [for the residue of a term of _____ years from the (*date*) created by a lease, dated the (*date*) and made between of _____ and _____ of _____].

(To be signed by the applicant or his solicitor.)

FORM 19.—*Priority Notice (under Rule 117) in respect of a Dealing with registered Land or a Charge.*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District _____

Parish _____

No. of Title _____

To the Registrar.

Take notice that I, A.B., of etc., desire to reserve priority for an instrument of transfer from myself to C.D., of etc., of the whole of the land comprised in the title above referred to (*or otherwise as the case may be*).

(To be signed by the applicant or his solicitor.)

FORM 20.—*Instrument of Transfer of Land. (Rule 126.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District _____

Parish _____

No. of Title _____

(*Date*.) In consideration of _____ pounds (£ _____) I, A.B., of etc., hereby transfer to C.D., of etc., the land comprised in the title above referred to.

Signed, sealed, and delivered
by the said A.B., in the presence of E.F., of etc. } (*Signature of A.B.*) (Seal.)

1903,
sched. 1,
ff. 21, 22.

Note.—Where the transfer is made under section 9, subsection 6 of the Act of 1897, and deals with part only of the land comprised in a title, or is made under Rule 96, the number of the title must be left blank, and instead of the words "the title above-referred to" a reference to the last preceding document of title containing a description of the land must be inserted.

When the consideration is advanced by different persons in separate sums, or does not consist, or wholly consist, of money, its nature, or the separate payments made, may be concisely stated.

When the transfer is to two or more jointly, no addition need be made to the form.

Where it is to two or more as tenants in common, one of the following forms may be used: "to C.D. and E.F. in equal shares," "to C.D. four-fifths, and to E.F. one-fifth of," and so on. Where the transferor retains a share, add the words "and I the said A.B. retain share or shares."

The amount of the consideration should be stated in words, and repeated in figures—as, for instance, "three hundred and seventy pounds (£370)."

FORM 21.—Instrument of Transfer of part of the Land comprised in a Title.
(Rule 127.)

As Form 20, adding after "the land" these words, "shown and edged with red on the accompanying plan and known as [and—if it is desired that a particular verbal description be entered on the register—described in the schedule hereto] being part of the land comprised in the title above referred to."

Add schedule, if any.

(To be executed as Form 20 by the transferor. The plan must be signed by the transferor and by or on behalf of the transferee.)

FORM 22.—Instrument of Transfer of Freehold Land to give effect to a Settlement, Tenant for Life to be registered as Proprietor. (Rule 128.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District _____
Parish _____
No. of Title _____

(*Date.*) In pursuance of the provisions of a settlement dated, etc., and made between, etc. (or created by the will of etc.), under which A.B., of etc., is (or has the powers of a) tenant for life under the Settled Land Acts, 1882 to 1890, and C.D., of etc., and E.F., of etc., are the trustees of (or with power of sale under) the said settlement, I, G.H., of etc., with the consent of the said A.B., hereby transfer to him the land comprised in the title above referred to, to hold to the uses, on the trusts and subject to the powers and provisions which under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging, and we, the said C.D. and E.F., apply for the registration of the following restriction [*all in the appropriate restriction*].

(To be executed as Form 20 by transferor, tenant for life, and trustees.)

Note 1.—Where other registered land is subject to the settlement, and

incumbrances under the settlement are protected by a charge or otherwise on the register, the following should be added :—

1903,
sched. 1,
ff. 23-26.

And I, the said A.B., hereby apply to the registrar, to note the extension of the charge, caution, restriction, etc., etc., No. , in the proprietorship (or charges) register of title No. to the above land.

Note 2.—Where the existing registered proprietor is to be tenant for life no transfer will be required, but only an application by the trustees, with his consent for the appropriate restriction.

Note 3.—For leasehold land, see Form 27.

FORM 23.—*Instrument of Transfer of Freehold Land to give effect to a Settlement, Trustees to be registered as Proprietors. (Rule 128.)*

Follow Form 22, substituting after the words “hereby transfer to” the names of the trustees for the word “him.”

(To be executed as Form 20 by transferor, tenant for life, and trustees.)

See Notes 1 and 3 to Form 22.

FORM 24.—*Instrument of Transfer of Freehold Land to give effect to a Settlement, Donees of an overriding Power of Appointment to be registered as Proprietors. (Rule 128.)*

Follow Form 22, inserting after the words “under which” the words “the limitations are to such uses as A.B., of etc., and C.D., of etc., shall jointly appoint, and subject thereto to various uses under which,” down to “said settlement,” and then continue : I [transferor], with the consent of [tenant for life] hereby transfer to the said A.B. and C.D. the land [etc., as in Form 22].

(To be executed as Form 20 by the transferor, donees of the power, tenant for life, and trustees.)

Note.—Where the existing registered proprietor is one of the donees of the power the form will be the same, except that the words of transfer will be “to myself and [the other donee].”

See Notes 1 and 3 to Form 22.

FORM 25.—*Instrument of Transfer of Freehold Land purchased with Capital Money liable to be laid out in the Purchase of Land to be assured to the uses of a Settlement, Tenant for Life, or Trustees to be registered as Proprietors. (Rule 128.)*

(Heading as in Form 22.)

(*Date.*) In consideration of pounds (£) paid out of capital money arising under a settlement dated, etc. [continue as in Form 22 or 23 according to circumstances].

(To be executed as Form 20 by transferor, tenant for life, and trustees.)

See Notes 1 and 2 to Form 22.

FORM 26.—*The like, the Donees of a joint overriding Power of Appointment being registered as Proprietors. (Rule 128.)*

(Heading as in Form 22.)

(*Date.*) In consideration of pounds (£) paid out of capital moneys arising under a settlement dated, etc., and made between, etc.

1903,
 sched. 1,
 ff. 27-31.

(or created by the will of, etc.), under which land is limited to such uses as A.B., of etc., and C.D., of etc., shall jointly appoint, and subject thereto to various uses by virtue of which the said A.B. is (or has the powers of a) tenant for life under the Settled Land Acts, 1882 to 1890, and G.H., of etc., and J.K., of etc., are trustees of the settlement, I, E.F., of etc., with the consent of A.B. as tenant for life, hereby transfer to him and the said C.D. the land comprised in the title above referred to, and we, the said G.H. and J.K., hereby apply for the entry on the register of the following restriction [*fill in Form 10*].

(To be executed as Form 20 by the transferor, donees of the power, tenant for life, and trustees.)

See Notes 1 and 3 to Form 22.

FORM 27.—Instrument of Transfer of Leasehold Land to give effect to a Settlement. (Rule 128.)

Follow Form 22, 23, 24, 25 or 26 according to circumstances, substituting after the words "to hold" the words "on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses trusts powers and provisions which under the settlement or by reason of the exercise of any power of charging therein contained are subsisting with respect to the settled freehold land but not so as to increase or multiply charges or powers of charging so nevertheless that the beneficial interest in the land shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go."

FORM 28.—Instrument of Transfer of land without the Mines and Minerals. (Rule 134.)

As Form 20, adding after "above referred to" the words "except the mines and minerals under the same."

FORM 29.—Instrument of Transfer of Land with certain specified Mines and Minerals only. (Rule 134.)

As Form 20, adding after "above referred to" the words "except the mines and minerals under the same other than," followed by a description of the mines and minerals to be transferred.

FORM 30.—Instrument of Transfer of Land, with the Mines and Minerals, excepting only certain specified Mines and Minerals. (Rule 134.)

As Form 20, adding after "above referred to" the word "except," followed by a description of the mines and minerals not to be transferred.

FORM 31.—Instrument of Transfer of the Mines and Minerals without the Land. (Rule 135.)

As Form 20, adding before "the land" the words "the mines and minerals under."

FORM 32.—Instrument of Transfer of certain specified Mines and Minerals without the Land. (Rule 135.)

1903,
sched. I,
ff. 32-36.

As Form 20, down to "C.D. of etc.," and then continue: "Such of the mines and minerals under the land comprised in the title above referred to as are here described, namely," followed by a description of the mines and minerals to be transferred."

FORM 33.—Instrument of Transfer, without the Land, of the Mines and Minerals, except certain specified Mines and Minerals. (Rule 135.)

As Form 20, down to "C.D. of etc.," and then continue: "The mines and minerals under the land comprised in the title above referred to, except" followed by a description of the mines and minerals not to be transferred.

FORM 34.—Instrument of Transfer of Land in exercise of a power of Sale contained in a Registered Charge. (Rule 137.)

As Form 20, adding after "(£)" the words, "and in exercise of the power of sale conferred by the charge, dated, etc., and registered, etc." and at the end, "discharged from the said charge."

FORM 35.—Instrument of Transfer of Leasehold Land. (Rule 138.)

As Form 20, adding at the end "for the residue of the term granted by the registered lease."

Where it is intended to negative the covenants implied by section 39 of the Act of 1875, or Rule 139, the following words may be added to the form:—

"The covenant by the transferor (or transferee, or the covenants by the transferor and transferee) implied by section 39 of the Act of 1875 (or Rule 139) is (or are) not to be implied."

FORM 36.—Instrument of Transfer of Land to a Company or Corporation. (Rule 144.)

(Heading as in Form 20.)

(Date.) In pursuance of a licence [etc., describing it, or, of the Act,] I, A.B., of, etc. [the registered proprietor] hereby transfer to [fill in the corporate name of the transferee, adding, if a corporation sole, "and his successors"] all the land [etc., as in Form 20 or 21 to the end of the Form].

(To be executed as Form 20.)

Note.—If the licence or statute contains any limit to the extent of land which may be conveyed or held, or any provisions as to the purposes for which it may be used, add at the end of the form: "And it is hereby declared that the land already held by the transferees under such licence (or Act), together with the land hereby transferred, does not exceed acres (or that no land other than that hereby transferred is held by the transferees), and that the present transfer is for the purposes of [fill in the purposes for which the land is to be used]."

1903,
sched. I,
ff. 37-41.

FORM 37.—Instrument of Transfer of Land for Charitable Uses. (Rule 145.)

(Heading as in Form 20.)

(*Date.*) In pursuance of the Act of (or other authority under which the transfer is made), I, A.B. [*the registered proprietor*], hereby transfer to C.D., of etc., all the land [*etc., as in Form 20 or 21 to the end of the form*] for the purpose of a public park (or museum, church, school, or as the case may be).

(To be executed as Form 20.)

Note.—If the statute contains any limit to the extent of land which may be conveyed or held, or any provisions as to the purposes for which it may be used, add a clause similar to that to be added at the end of Form 36 in the like case.

FORM 38.—Certificate as to Vesting in an Incumbent or other Ecclesiastical Corporation. (Rule 147.)

(*Date.*) This is to certify that the land (or hereditaments, etc.) comprised in a [*describe the transfer*] would under the provisions of [*state the statute*] (if such transfer were a conveyance under such Act), vest in the incumbent, of (or bishop of, as the case may be) and his successors immediately (or as the case may be) upon the happening of the event following, namely, the

(To be sealed by the Ecclesiastical Commissioners.)

FORM 39.—The like Certificate under the New Parishes Act. (Rule 148.)

(*Date.*) This is to certify that the land (or, hereditaments, etc.) comprised in a [*describe conveyance or transfer, etc.*] would, by the operation of the New Parishes Acts, 1843 to 1884, have vested in the incumbent of and his successors.

(To be sealed by the Ecclesiastical Commissioners.)

FORM 40.—The like Certificate under Rule 149.

(*Date.*) This is to certify that the [*describe Scheme and Order in Council or instrument or conveyance, etc.*] would operate to vest immediately (or, on publication in the London Gazette, or at some subsequent period, as the case may be), the land (or other hereditaments, describing it or them by reference to the register if possible) in the [*describe the corporation or person*].

(To be sealed by the Ecclesiastical Commissioners.)

FORM 41.—Instrument of Transfer of Land subject to restrictive conditions under section 84 of the Act of 1875. (Rule 153.)

As Form 20 or 21, adding at the end, "subject to the following restrictive conditions namely":—[*here add the restrictive conditions, as for instance:—*

1. No house on the land shall be used otherwise than as a private dwelling house.
2. The building line shown on the plan shall be observed.
3. Nothing shall be done or permitted on the land that shall be a nuisance to the owners of adjoining land.

4. No house shall be erected of a less value than £500.]

(To be executed as Form 20 by both parties.)

1903,
sched. I,
ff. 42, 43.

Note.—The conditions must be so framed as to be clear and intelligible when placed in the register of the land transferred, without reference to any document or matter of law or fact which does not appear thereon.

Only restrictive covenants can be registered. Covenants to expend money or to do any work on the land may be added to the transfer, but will not be expressly noticed in the register.

FORM 42.—*Instrument of Exchange.* (Rule 154.)

(Heading as in Form 20.)

(*Date.*) In consideration of the transfers hereinafter contained (and, *if so*, of the sum of pounds (£) paid by C.D. for equality) I, A.B., of etc., hereby transfer to C.D., of etc., the land, shown and edged with red on the accompanying plan, signed by me and by the said C.D. (*or* the plan attached hereto *or* endorsed hereon), and I, the said C.D., hereby transfer to the said A.B. the land shown and edged with green on the same plan (and, *if so*, I, the said A.B., hereby apply to have the said land, edged with green, added to the land comprised in title No. , of which I am the registered proprietor, and I, the said C.D., apply to have the said land, edged with red, added to the land comprised in title No. , of which I am the registered proprietor).

(To be executed as Form 20 by both parties.)

Note.—If preferred, the transaction may be carried out by two instruments in Form 20 or 21, altering the consideration as follows:—

“In consideration of a transfer (or conveyance) of even date herewith (and, *if so*, of the sum of pounds (£) paid to me for equality).”

When and so far as the land taken in exchange is not registered, the conveyance thereof will be in the ordinary form.

If it is desired that a particular verbal description of the land be entered in the register, add after the word “plan” or “hereon,” as the case may be, the words “and described in the [first, second] schedule hereto,”—and add a schedule or schedules at the end.

FORM 43.—*Instrument of Partition.* (Rule 156.)

(Heading as in Form 20.)

(*Date.*) We, A.B., of etc., C.D., of etc., and E.F., of etc., hereby transfer the respective lands shown and edged with red on the accompanying plans (*or* plan) signed by us (*or* on the plan attached hereto *or* endorsed hereon) and (thereon) marked X., Y., and Z. to the said A.B., C.D., and E.F. separately and respectively.

(To be executed as Form 20 by all parties.)

Note.—If preferred, the plan may be tinted in different colours, and the instrument altered to correspond therewith.

If it is desired that a particular verbal description of the land be entered in the register, add after the word “plan” or “hereon,” as the case may be, the words “and described in the [first, second] schedule hereto,” and add a schedule or schedules at the end.

1903,
sched. I,
f. 44.

FORM 44.—*Instrument of Charge. (Rule 158.)*

(Heading as in Form 20.)

(*Date.*) In consideration of pounds (£) I, A.B., of etc., hereby charge the land comprised in the title above referred to with the payment to C.D., of etc., on the of , 19 , of the principal sum of £ , with interest at per cent. per annum, payable [half yearly, quarterly] on the of , etc. in every year.

(To be executed as Form 20.)

Note.—Where the charge is made under section 9, subsection 6 of the Act of 1897, and deals with part only of the land comprised in a title, or is made under Rule 96, the number of the title must be left blank, and instead of the words "the title above referred to" a reference to the last preceding document of title containing a description of the land must be inserted.

Where the consideration is advanced by different persons in separate sums or does not consist, or wholly consist, of money, its nature, or the separate payments made, may be concisely stated.

The amount of the consideration should be stated in words, and repeated in figures—as, for instance, "three hundred and seventy pounds (£370)."

Where the charge is to two or more jointly, no addition need be made to the form.

Where the money is to be held in separate shares, the following variation may be used:—

After "payment to" insert "C.D., of etc., and E.F., of etc., on the of , 19 , of the respective principal sums of and with interest" etc., as in the above form.

Any of the following special stipulations may also be added at the end of the charge.

A.—Stipulations negating the Covenants implied in charges by sections 23 & 24 of the Act of 1875.

(1.) No covenant is hereby implied to pay the principal or interest secured by the charge.

(2.) No covenant is hereby implied as to payment of rent or performance or observance of the covenants or conditions of the registered lease, or as to indemnity in respect thereof.

B.—Stipulations in Charges excluding the provisions of sections 25 to 27 of the Act of 1875, and altering the priority of Charges under section 28 of the same Act.

(1.) The creditor shall have no power to enter on the land.

(2.) The creditor shall have no power to enforce foreclosure or sale of the land.

(3.) The creditor shall have no power of sale.

(4.) The creditor may exercise the power of sale without notice.

(5.) This charge shall rank *pari passu* with a charge of even date to of to secure or shall be the [first, second, third, etc., as the case may be] in order of priority of three charges of even date, one of which is to of to secure , another is to of to secure , and the other is this charge or shall have priority to a charge dated etc., registered etc. in favour of A.B. of, etc., for (or otherwise as the case may be).

C.—*Miscellaneous Stipulations.*1903,
sched. 1,
ff. 45, 46.

(1.) The interest to be secured by the charge shall be reduced to per cent. in every (half year, quarter, etc.) in which it is paid within days after it becomes due.

(2.) None of the principal secured by the charge shall be called in till the of 19 unless the interest shall fail to be paid within days after it becomes due.

(3.) None of the principal secured by the charge shall be paid off till the of 19 unless the proprietor of the charge shall be willing to accept it.

(4.) If the interest secured by the charge shall be paid within days after it becomes due the principal shall be payable by instalments of each, to be paid on the of and the of in every year, the first of such instalments to be paid on the of 19 .

Provided that on failure of payment of any instalment within days after it becomes due, the whole of the principal remaining owing on the said security shall become payable at once.

Provided nevertheless that the whole or any part (not less than at any one time) of the above-mentioned principal may be paid off on giving one calendar month's notice in writing of the intention to do so, and on paying up all arrears of interest that may be due at the time of such payment of principal.

FORM 45.—*Instrument of Charge by way of Annuity.* (Rule 160.)

(Heading as in Form 20.)

(Date.) I, A.B., of etc., hereby charge the land comprised in the title above referred to with the payment to C.D., of etc., of an annuity of for years (or during his life, etc.) payable [half-yearly, quarterly] on the of etc., in every year.

(To be executed as Form 20.)

Note.—If there is any consideration, it can be stated at the commencement as "To secure part of the purchase money of the land comprised in the title above referred to" or "In consideration of an instrument of transfer of even date herewith of the land comprised in the title above referred to," etc., etc.

If only part of the land comprised in the title is charged, add after "land" the words "shown and edged with red in the accompanying plan signed by me, being part of the land," etc.

If the charge is to secure a periodical payment which is not an annuity, the form may be varied accordingly.

FORM 46.—*Instrument of Charge to secure future advances.* (Rule 160.)

As Form 44, adding at the end, "and of every sum hereafter advanced by him with interest at the rate aforesaid, payable on the appointed days, and computed from the time of advancing the same."

1903,
sched. 1,
ff. 47-50.

FORM 47.—*Application to alter the terms of a Charge under Section 9 (5) of the Act of 1897. (Rule 165.)*

(Heading as in Form 20.)

(Date.) We, A.B., of etc. [*registered proprietor of the land*], C.D., of etc., [*registered proprietor of the charge*], and E.F., of etc. [*registered proprietor of a charge of equal or inferior priority prejudicially affected*], hereby apply to the registrar to alter the terms of the charge dated (date), registered (date), against the title above referred to, as follows:—

(Fill in the proposed alteration.)

(To be executed as Form 20 by all parties.)

FORM 48.—*Instrument of Discharge of Registered Charge. (Rule 166.)*

(Heading as in Form 20.)

(Date.) I, A.B., of etc., hereby admit that the charge dated (date), and registered (date), of which I am the registered proprietor, has been discharged.

(To be signed by the registered proprietor of the charge, and attested.)

Note.—The discharge may be made as to part of the land only, by adding at the end “as to the land shown and edged with red on the accompanying plan, signed by me, being part of,” or as to part of the money only by adding “to the extent of .”

Where the charge was for future advances or for an indefinite amount there must be added to the discharge, for the purpose of stamp duty, a statement of the total amount or value of the money at any time secured.

FORM 49.—*Instrument of Transfer of Charge. (Rule 168.)*

(Heading as in Form 20.)

(Date.) In consideration of , I, A.B., of etc., hereby transfer to C.D., of etc., the charge dated (date), and registered (date), of which I am the registered proprietor. (*If part only of the money secured is transferred add: as to the sum of pounds £ .*)

(To be executed as Form 20.)

Note.—Where the charge is transferred to two or more as tenants in common, words to that effect should be added stating the sum transferred to each: *see note* to Form 20.

FORM 50.—*Instrument of Transfer and Discharge. (Rule 182.)*

(Heading as in Form 20.)

(Date.) In consideration of pounds (£) paid to A.B., of etc., [*the proprietor of the land*], and of pounds (£) paid to C.D., of etc., [*the proprietor of the charge*], the said A.B. hereby transfers to E.F., of etc., the land comprised in the title above referred to, and the said C.D. hereby discharges the same from the charge dated (date), registered (date), of which he is the registered proprietor, and from all liability in respect thereof.

(To be executed as Form 20 by A.B. and C.D.)

Note.—Where there are two or more charges to be discharged, the form may be altered as follows:—

After "C.D., of etc." insert "and pounds (£) paid to E.F. of etc.," (and so on, as to the proprietors of all the charges to be discharged), and after "above referred to," continue, "the said C.D. and E.F. hereby respectively discharge the same from the charges dated (date), and (date) (and so on as to all the charges to be discharged) registered (date), and (date) (and so on) of which they are the respective proprietors, and from all liability in respect thereof."

1903,
sched. 1,
ff. 51-53.

FORM 51.—Instrument of Assent to a Devise of Land under section 3 of the Act of 1897. (Rule 185.)

(Heading as in Form 20.)

(Date.) I, A.B., of etc., as personal representative of the late C.D., of etc., hereby assent to the devise contained in the will of the said C.D. to E.F. of the land comprised in the title above referred to.

(To be signed by A.B. and attested.)

Note.—If the assent is to be subject to a charge for payment of money which the personal representative is liable to pay, or if the land devised is part only of the land comprised in the title referred to, the form may be varied accordingly.

FORM 52.—Instrument of Appropriation of Land in satisfaction of a Legacy or Share in Residuary Estate under section 4 of the Act of 1897. (Rule 185.)

(Heading and commencement as in last Form down to "hereby.")

With the consent of E.F., of etc., who is entitled to a legacy (or share in residuary estate) under the will of the said C.D., appropriate to the said E.F., the land comprised in the title above referred to, and certify that all proper notices under the 4th section of the Land Transfer Act, 1897, have been given, [and the requirements of the Rules of Court under the Land Transfer Acts have been duly complied with].

(To be signed by A.B. and E.F. and attested.)

Note.—If the land appropriated is part only of the land comprised in the title referred to, the form may be varied accordingly.

FORM 53.—Notice of divesting of the Estate of the Official Receiver or of a Trustee in Bankruptcy. (Rule 199.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District _____

Parish _____

No. of Title _____

[No. of (or other reference to) Charge _____]

(Date.) I, (A.B., of etc.) the official receiver (or trustee in the bankruptcy of C.D.) hereby give notice that by reason of [describe the act, omission or order by reason of which the estate is divested] my estate and interest in the land (or, charge) above referred to has been divested, and I hereby apply for entry of this notice on the register according to Rule 199.

(To be signed by the Official Receiver or trustee.)

1903,
 sched. 1,
 ff. 54-58.

FORM 54.—*Application to enter Notice of an Estate in Dower or by the Curtesy. (Rule 207.)*

(Heading as in Form 20.)

I, A.B., of etc., being entitled to an estate in Dower (or by the Curtesy) in the land comprised in the title above referred to, by reason of [*state concisely the facts on which the claim depends*] hereby apply for registration of notice thereof.

(To be signed by the applicant and her (or his) solicitor.)

Note.—The application should be accompanied by evidence of the facts on which the claim depends.

FORM 55.—*Notice of Liability to Death Duty. (Rule 208.)*

The land is liable to such death duties as may be payable or arise by reason of the death of A.B., of etc., who died on the (*date*) (or by reason of a settlement created by deed dated, etc., or by reason of the determination of a lease dated, etc., or as the case may be).

FORM 56.—*Certificate of Non-liability to Death Duty. (Rule 210.)*

This is to certify that the land comprised in the title No. , may be registered without notice of any liability to death duty by reason of the death of A.B., of etc., and that any such notice already registered may be cancelled.

Dated the day of 19 .

Note.—If the Certificate is to apply to part only of the land comprised in the title, the words "shown and edged with red on the accompanying map, being part of the land," should be inserted after the word "land."

FORM 57.—*Entry restraining a Disposition by a sole surviving Proprietor. (Rule 224.)*

(*Date.*) When the number of joint proprietors has been reduced to one no registered disposition of the land [or charge] shall be made except under an order of the registrar, after an inquiry into title, or an order of the Court.

FORM 58.—*Caution (under the 53rd section of the Act of 1875) against Dealings with Registered Land or a Charge. (Rule 226.)*

(Heading as in Form 53.)

(*Date.*) A.B. [*the cautioner*] of etc., requires that no dealing with the land (or charge) above referred to (or with the land shown and edged with red on the plan attached hereto) shall be had on the part of the registered proprietor until notice has been served upon him.

(To be signed by the cautioner or his solicitor.)

Note.—If the cautioner's address is not within the United Kingdom, an address for service within it must also be given.

FORM 59.—*Caution against the registration of a Possessory or Qualified Title, as Qualified or Absolute. (Rule 226.)*

1903,
sched. 1,
ff. 59-63.

(Heading as in Form 53.)

(*Date.*) A.B. [*the cautioner*] of etc., requires that no application to register the land above referred to with a qualified or absolute title shall be proceeded with until notice has been served upon him.

(To be signed by the cautioner or his solicitor.)

Note.—If the cautioner's address is not within the United Kingdom, an address for service within it must also be given.

FORM 60.—*Notice to a Person who has lodged a Caution. (Rule 229.)*

(Heading as in Form 53.)

Notice.—The caution lodged by you in this office on the (*date*), requiring that no dealing with the land (*or charge*) above referred to should be had on the part of the registered proprietor until notice has been served upon you, will cease to have any effect after the expiration of 14 days next ensuing the date at which this notice is served, unless an order to the contrary is made by the registrar.

Dated the day of 19 .

FORM 61.—*Application to withdraw a Caution. (Rule 233.)*

(Heading as in Form 53.)

(*Date.*) I, A.B., of etc. [*the cautioner*] hereby apply to withdraw the Caution lodged in my name on the (*date*) against the title [*or charge*] above referred to.

(To be signed by the applicant or his solicitor.)

FORM 62.—*Inhibition where the Incumbent of a Benefice is the registered Proprietor of Land. (Rule 237.)*

No disposition of the land shall be registered except on production of a certificate from Queen Anne's Bounty, the Board of Agriculture, or the Ecclesiastical Commissioners, in accordance with section 15 of the Land Transfer Act, 1897.

No lien shall be created by deposit of the land certificate.

FORM 63.—*Certificate under section 15 of the Act of 1897 as to a Disposition by the Incumbent of a Benefice. (Rule 239.)*

(To be endorsed on the instrument presented for registration.)

(*Date.*) This is to certify that the within-written (transfer, charge, etc.) is made under the provisions of [*state the statute or other authority under which it is made*] and is authorized thereby, and may be registered.

(To be sealed by Queen Anne's Bounty, or the Ecclesiastical Commissioners, as the case may be.)

1903,
 sched. I,
 ff. 64-66.

FORM 64.—*Application to register a Restriction under section 58 of the Act of 1875, as amended by the Act of 1897. (Rule 240.)*

(Heading as in Form 53.)

(Date.) A.B., (*the registered proprietor*) of etc., hereby applies to the registrar to enter the following restriction against the title (*or charge*) above referred to.

Restriction.—No disposition shall be registered without the consent of C.D., of etc. (*or otherwise—see examples in Forms 6 to 13*) or an order of the registrar.

FORM 65.—*Application to withdraw or modify a Restriction. (Rule 240.)*

(Heading as in Form 53.)

(Date.) A.B., of etc., hereby applies to the registrar to modify (*or withdraw*) the restriction registered on the (*date*), against the title (*or charge*) above referred to as follows:—[*Fill in the proposed modification or in case of withdrawal omit the words "as follows."*]

(To be signed by the applicant or his solicitor, and all other persons interested or their respective solicitors.)

FORM 66.—*Land Certificate. (Rule 258.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

LAND



CERTIFICATE.

This is to certify that the freehold (*or leasehold*) land in the Parish of and County of (*here fill in a short description of the land, or reference to the filed plan*) is registered with absolute (*qualified, good leasehold, or possessory*) title under No. . Copies of the entries in the register (and of the filed plan of the land) are within.

Dated the of 19 . (L.S.)

Note.—The description of the property to which the Certificate relates must be adapted to that by which it is described in the register. When the registration is of a possessory title only, the Certificate is to contain the following notice: "The possessory title hereby certified does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title hereby certified, which was subsisting or capable of arising on the day of , being the date of first registration."

The form may be modified under special circumstances in such manner as the registrar may deem necessary.

Where under Rule 271 a plan is not filed, the form shall be altered accordingly.

Cancelled entries need not be copied, but may be referred to as "cancelled" only.

FORM 67.—*Authority under Rule 286.*1903,
sched. 1,
ff. 67-70.

(Heading as in Form 53.)

(Date.) I, A.B., of etc. (*the registered proprietor*), hereby authorize the bearer to apply at any time to the registrar for information as to the entries in the register of the title above referred to at the above date.

(To be signed by A.B.)

FORM 68.—*Official Certificate of result of Search.* (Rule 289.)

District _____
Parish _____
No. of Title _____

[Reference to charge or incumbrance .]

(Date.) In reply to an application, dated, etc., made by A.B., of etc., requiring a search to be made, whether [etc., *stating the effect of the application*] it is hereby certified that the search has been diligently made, with the following result:—

(Fill in result of search.)

FORM 69.—*Summons on application to the Court.* (Rule 302.)

In the LAND REGISTRY.
Mr. Justice

Title No.

Between A.B., Applicant, and C.D., Respondent.

Let all parties concerned attend the Judge in Chambers (Court No. Royal Courts of Justice, Strand, London) on the day named in the margin of this Summons, on the hearing of an application on the part of A.B., of etc., for the decision of the Court upon the question (*or questions*) referred to in the Statement, a copy of which is set forth in the Schedule, or annexed to this Summons.

Dated the day of 19 .

This Summons was taken out by , of , Solicitor for the Applicant [or by the Applicant in person].
To

(The Schedule above referred to.)

Note.—This Schedule will be a copy of the Statement settled and signed by the registrar under Rule 300.

FORM 70.—*Certificate of Value.* (Rule 330.)

(Heading as in Form 1.)

I, A.B., of etc., am well acquainted with the land which is the subject of the (*describe the instrument or application which is being made*), and I certify that to the best of my judgment, knowledge, and belief, the present capital value thereof, together with all buildings and improvements, and timber (*if any*) does not exceed £ .

Dated the day of 19 .

1903,
 sched. 1,
 ff. 71, 72.

FORM 71.—*Certificate of Examination of a Married Woman.* (Rule 340.)

(Heading as in Form 1.)

This is to certify that on the day of 19 , before me, A.B., a perpetual Commissioner appointed for the County of for taking the acknowledgments of deeds by married women pursuant to the Fines and Recoveries Act, 1833, appeared personally C.D., the wife of E.D., of etc., and produced a paper writing, marked , bearing date the day of , 19 , and identified by my signature. And I do hereby certify that the said C.D. was, at the time of her producing the same paper writing, of full age and competent understanding, and that she was examined by me apart from her husband, touching her knowledge of the contents of the said paper writing, and of the nature and effect of the application [*disposition, or other act, as the case may be*] therein mentioned, and that I ascertained she was acting with respect thereto freely and voluntarily, and assented to the same after full explanation of her rights and of the effect of the proposed application [*disposition, or other act, as the case may be*].

Dated this day of 19 .

(To be signed by the Commissioner.)

FORM 72.—*Statutory Declaration verifying a Certificate of Examination of Married Woman.* (Rule 340.)

(Heading as in Form 1.)

I, A.B., of etc., solemnly and sincerely declare as follows:—

I know C.D., the wife of E.D., in the certificate hereunto annexed mentioned, and that the said certificate was signed by F.G., of etc. [*Commissioner*] in the said certificate mentioned, at etc., in my presence.

To the best of my knowledge and belief, the said F.G. is not in any manner interested in the transaction giving occasion for such examination, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned.

And I make, etc.

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